

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of	)	
	)	Matters Under Review
Robert Cone	)	4568, 4633, 4634 and 4736
	)	

**GENERAL COUNSEL'S BRIEF**

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**4568, 4633, 4634 and 4736**

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<sup>2</sup> "Triad" is an acronym for Tactical Resources in American Democracy. Triad existed both as a sole proprietorship operated by Carolyn Malenick and as a corporation for which Ms. Malenick was the President and sole shareholder. Triad Inc. was incorporated on May 28, 1996, and, beginning on July 1, 1996, assumed responsibility and began paying for various activities previously initiated by Triad/CSM. Ms. Malenick also was the President of CREF, and Triad Inc. had contracts to manage the 1996 activities of CREF and CR.

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1 On June 2, 1998, in connection with MURs 4568, 4633 and 4634, the  
2 Commission found reason to believe that Robert Cone violated 2 U.S.C. § 441a(a)(1) by  
3 making excessive contributions to Triad/CSM, Triad Inc., CREF and CR during the 1996  
4 election cycle. The Commission also found reason to believe that Robert Cone violated  
5 2 U.S.C. § 441a(a)(3) by making more than \$25,000 in federal political contributions  
6 during 1995 and 1996. On February 23 and July 20, 1999, the Commission made the  
7 same reason to believe findings against Mr. Cone regarding violations of the Act in  
8 connection with MUR 4736. Due to the related and overlapping nature of the allegations  
9 in the complaints from each of these matters, the Commission decided that MURs 4568,  
10 4633, 4634 and 4736 would be investigated together.

11 After receiving the production of documents and written discovery responses  
12 various respondents, including Mr. Cone, during 1998-1999, this Office negotiated  
13 Stipulations of Fact with Triad Inc. and Ms. Malenick (hereinafter "Triad Stips"), as well  
14 as with CREF and CR (hereinafter "CREF Stips" and "CR Stips"). These Stipulations of  
15 Fact, which were limited to undisputed matters, were finalized in December 1999, and  
16 entered into by the Commission in February 2000. Thereafter, this Office took the  
17 deposition of Mr. Cone, and deposed or interviewed, among others, several Triad/CSM,  
18 Triad Inc., CREF and CR employees and representatives. Ms. Malenick, who was the  
19 central figure in the activities of Triad/CSM, Triad Inc., CREF and CR, asserted her Fifth  
20 Amendment privilege against self-incrimination, rather than testify in this matter.

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1    **II.    INTRODUCTION AND SUMMARY**

2            Evidence uncovered during this investigation demonstrates that Triad/CSM, Triad  
3    Inc., CREF and CR operated as political committees that sought to influence federal  
4    elections during 1995-1996. Further, the investigation has shown that Robert Cone, who  
5    was involved in the formation of some, and operation of all, of these entities, made  
6    excessive federal political contributions to Triad/CSM, Triad Inc., CREF and CR during  
7    the 1996 election cycle.

8            In its responses to the complaints, as well as to the Commission's findings and  
9    order to answer written questions, Triad/CSM and Triad Inc. have claimed to be a for-  
10   profit enterprise whose business was providing specialized information, advice and  
11   services to conservative donors in connection with their political and charitable  
12   contributions. Both CREF and CR have claimed to be non-profit social welfare  
13   organizations which engaged in issue education advocacy during the latter half of 1996.  
14   The facts uncovered during the investigation, however, show that there is probable cause  
15   to believe that Triad/CSM, Triad Inc., CREF and CR acted, along with certain persons,  
16   including Mr. Cone, as unregistered and nonreporting political committees, whose major  
17   purpose was electoral activity in connection with the 1996 congressional elections.

18            As set forth in more detail below, the stated goals of Triad/CSM and Triad Inc.  
19   were to expand and protect the Republican majority in Congress during the 1996 election  
20   cycle. Starting as early as the late Summer and early Fall of 1995, Triad/CSM promoted  
21   this goal by providing campaigns with consulting and fundraising services, by distributing  
22   publications containing express advocacy, by soliciting, collecting and forwarding several  
23   hundred thousand of dollars to federal congressional campaign committees and a

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1 coalition of political action committees ("PACs"), including two PACs controlled by  
2 Triad and Ms. Malenick. Beginning shortly after its incorporation in May 1996, Triad  
3 Inc. promoted these goals with these same types of activities. During the latter half of  
4 1996, Triad Inc. also managed the activities of both CREF and CR, which promoted the  
5 same electoral goals through \$3 million in targeted political advertising that was  
6 broadcast and distributed immediately prior to the 1996 congressional elections. As  
7 discussed below, the investigation has uncovered evidence that a substantial portion of  
8 this advertising was coordinated with specific 1996 congressional campaigns.

9 Thus, based on its investigation, this Office is prepared to recommend that the  
10 Commission find probable cause to believe that Robert Cone violated 2 U.S.C.  
11 §§ 441a(a)(1) and 441a(a)(3).

### 12 **III. FACTUAL AND LEGAL ANALYSIS**

#### 13 **A. THE APPLICABLE LAW**

##### 14 **1. Political Committee Status and Reporting**

15 The Federal Election Campaign Act of 1971, as amended ("the Act"), requires any  
16 organization which qualifies as a political committee to register with the Commission and  
17 file periodic reports of all receipts and disbursements. 2 U.S.C. §§ 433 and 434. The Act  
18 also requires that, when registering with the Commission, a political committee include in  
19 its statement of organization "the name, address, relationship and type of any connected  
20 organization or affiliated committee." 2 U.S.C. § 433(b)(2).

21 The Act defines a political committee as any committee, club, association, or  
22 other group of persons which receives "contributions" or makes "expenditures"



1 aggregating in excess of \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A).<sup>4</sup> For the  
2 purposes of the Act, the term "person" is defined as including "an individual, partnership,  
3 committee, association, corporation, labor organization or any other organization or group  
4 of persons . . . ." 2 U.S.C. § 431(11).

5 The Act defines "contribution" as "any gift, subscription, loan, advance, or  
6 deposit of money or anything of value made by any person for the purpose of influencing  
7 any election for federal office." 2 U.S.C. § 431(8)(a)(i). An "expenditure" is defined as  
8 "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything  
9 of value, made by any person for the purpose of influencing any election for federal  
10 office." The Commission has defined "anything of value" to include, among other things,  
11 all in-kind contributions, *i.e.*, the provision of any goods and services without charge or at  
12 a charge which is less than the usual and normal charge for such goods and services . . . ."  
13 11 C.F.R. §§ 100.7(a)(1)(iii) and 100.8(a)(1)(iv).

14 In *Buckley v. Valeo*, 424 U.S. 1 (1976) ("*Buckley*"), the Supreme Court, in order to  
15 avoid overbreadth, construed the Act's references to "political committee" so as to prevent  
16 their "reach [to] groups engaged purely in issue discussion." The Court recognized that  
17 "[t]o fulfill the purpose of the Act [the designation 'political committee'] should  
18 encompass organizations that are under the control of a candidate or the major purpose of  
19 which is the nomination or election of a candidate." 424 U.S. at 79.

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<sup>4</sup> The Commission has issued an Advance Notice of Proposed Rulemaking, which seeks comment on proposed revisions to the definition of "political committee" currently found in the Regulations. The proposed revisions focus on possible changes to the definition of "contribution" and "expenditure" which trigger political committee status as well as ways in which a "major purpose" test might be incorporated into the rules. *See* Definition of Political Committee, 66 Fed. Reg. 13681(2001) (to be codified at 11 C.F.R. Part 100) (March 7, 2001).

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1           In *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986) (“*MCFL*”), the  
2 Supreme Court analyzed whether a non-profit advocacy corporation that had made more  
3 than \$1,000 in independent expenditures was a political committee. The Court noted that  
4 the “central organizational purpose” of *MCFL*, which it found to be issue advocacy, did  
5 not meet the *Buckley* definition of a political committee, *i.e.*, it was not controlled by a  
6 candidate and did not have as a major purpose the nomination or election of a candidate.  
7 479 U.S. at 252, n.6. The *MCFL* Court also noted, however, that should the  
8 organization’s “independent spending become so extensive that the organization’s major  
9 purpose may be regarded as campaign activity, the corporation would be classified as a  
10 political committee.” 479 U.S. at 262.

11           The Commission has taken the position that, “when determining if an entity  
12 should be treated as a political committee, the standard used is whether the organization’s  
13 major purpose is campaign activity; that is, making payments or donations to influence  
14 any election to public office.” Advisory Opinion 1996-3. *But see FEC v. GOPAC*, 917  
15 F.Supp. 851, 859-862 (D.D.C. 1996)(the major purpose of a political committee must be  
16 to support a particular candidate or candidates for federal office). The “major purpose” of  
17 an organization may be shown by public statements of its purpose or by other means  
18 “such as its expenditures in cash or in kind to or for the benefit of a particular candidate  
19 or candidates for federal office.” *Id.* at 859-60.<sup>5</sup>

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<sup>5</sup>           In *Akins v. FEC*, 101 F.3d 731 (D.C. Cir. 1996) (*en banc*), the court held that the Commission’s application of the “major purpose” test to find political committee status was inappropriate. The court held that the statutory language defining “political committee” is not ambiguous, 101 F.3d at 740, but further noted that the Supreme Court’s discussion of “major purpose” in *Buckley* and *MCFL* applied only to independent expenditures, not to coordinated expenditures and direct contributions. *Id.* at 741-42. The Supreme Court subsequently vacated

1                   2.     Limits on Contributions

2             Under the Act, no person, including a political committee, may contribute more  
3     than \$1,000 per election to any candidate for federal office or his authorized committee.  
4     2 U.S.C. § 441a(a)(1). In addition, no person may contribute more than \$5,000 per  
5     calendar year to any other political committee that is not the authorized political  
6     committee of any candidate. 2 U.S.C. § 441a(a)(1)(c). Finally, the Act places a \$25,000  
7     cap on the total amount of political contributions that an individual can make in any  
8     calendar year. This statutory provision also limits to \$5,000 the amount that a qualified  
9     multicandidate committee may contribute to a candidate or their authorized committee.<sup>5</sup>

10            All contributions made or received by more than one affiliated committee,  
11     regardless of whether they are “political committees” under 11 C.F.R. § 100.5, shall be  
12     considered to have been made or received by a single political committee. 11 C.F.R.  
13     § 110.3(a)(1). The term “affiliated committee” includes all committees “established,  
14     financed, maintained or controlled by the same corporation, labor organization, person, or  
15     groups of persons, including any parent, subsidiary, branch, division, department, or local  
16     unit thereof . . . ” 11 C.F.R. § 100.5(g)(2). Affiliated committees sharing a single  
17     contribution limitation include all of the committees established, maintained or controlled  
18     by “a single corporation and/or its subsidiaries” or “the same person or group of persons.”  
19     11 C.F.R. § 110.3(a)(2). If at least one member of a group of connected organizations or  
20     affiliated committees meets the definition of a “political committee” under the Act, all

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this decision for other reasons, *see FEC v. Akins, et al.*, 524 U.S. 11 (1998), without ruling on the criteria for an organization to be deemed a “political committee.”

1 contributions made or received by any of the connected organizations or affiliated  
2 committees, regardless of whether they are "political committees" themselves, shall be  
3 considered to have been made or received by a single political committee. 11 C.F.R.  
4 § 110.3(a).

5 The Commission may examine the relationship between organizations that  
6 sponsor committees, between the committees themselves, or between one sponsoring  
7 organization and a committee sponsored by another organization to determine whether  
8 committees are affiliated. 11 C.F.R. § 110.3(a)(3).

9 **3. Express Advocacy**

10 With respect to corporate expenditures for communications made independently  
11 from any candidate or his or her agent, the Supreme Court has held that they are  
12 prohibited only if the message conveyed by such expenditures "expressly advocates" the  
13 election or defeat of a clearly identified candidate. *MCFL, supra*, 479 U.S. at 248-249  
14 (citation omitted). In *Buckley*, the court provided an illustrative, but non-exclusive, list of  
15 the words or phrases, including "support," that constitute express advocacy. *See* 424 U.S.  
16 at 44 n. 52. Subsequently, in *MCFL*, the Court found that a newsletter which did not  
17 contain any of the precise phrases set forth in *Buckley* nonetheless contained words which  
18 were "in effect" express advocacy." *See* 479 U.S. at 249. Although the newsletter in  
19 *MCFL* did list issues and contain issue advocacy, the Court found that it was not a "mere

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<sup>5</sup> A multicandidate committee is a committee which has been registered with the Commission for at least six months, has received contributions from more than 50 persons, and has made contributions to five or more candidates for federal office. 2 U.S.C. § 441a(a)(4).

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1 discussion of public issues” but went “beyond issue advocacy to express electoral  
2 advocacy.” *Id.*<sup>6</sup>

3 In 1995, the Commission promulgated 11 C.F.R. § 100.22 to provide guidance on  
4 the concept of express advocacy in accordance with judicial interpretations, including  
5 *Buckley* and *MCFL*. Under that provision, “Expressly advocating” means any  
6 communication that:

7 (a) uses phrases such as “vote for the President,” “re-elect  
8 your congressman,” “support the Republican challenger  
9 for U.S. Senate in Georgia,” “Smith for Congress,”  
10 “Bill McKay in ‘94,” “vote Pro-Life,” or “vote Pro-  
11 Choice” accompanied by a listing of clearly identified  
12 candidates described as Pro-Life or Pro-Choice, “vote  
13 against Old Hickory,” “defeat” accompanied by a  
14 picture of one or more candidate(s), “reject the  
15 incumbent,” or communications of campaign slogan(s)  
16 or individual word(s), which in context can have no  
17 other reasonable meaning than to urge the election or  
18 defeat of one or more clearly identified candidate(s),  
19 such as posters or bumper stickers, advertisements, etc.  
20 which say “Nixon’s the One,” “Carter ‘76”,  
21 “Reagan/Bush,” or “Mondale!”; or

22 (b) When taken as a whole and with limited reference to  
23 external events, such as the proximity to the election,  
24 could only be interpreted by a reasonable person as  
25 containing advocacy of the election or defeat of one or  
26 more clearly identified candidate(s) because-

27 (1) The electoral portion of the communication is  
28 unmistakable, unambiguous, and suggestive of  
29 only one meaning; and

30 (2) Reasonable minds could not differ as to whether  
31 it encourages actions to elect or defeat one or

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<sup>6</sup> See also *FEC v. Furgatch*, 807 F. 2d 857, 862-(9<sup>th</sup> Cir.), *cert. denied*, 484 U.S. 850 (1987) (“[E]xpress advocacy is not strictly limited to communications using certain key phrases.”)

1 more clearly identified candidate(s) or  
2 encourages some other kind of action.<sup>7</sup>  
3

4 In the Explanation and Justification for the new regulation, the Commission  
5 stated: "Please note that exhortations to contribute time or money to a candidate would  
6 also fall within the revised definition of 'express advocacy.' The expressions enumerated  
7 in *Buckley* included 'support,' a term that encompassed a variety of activities beyond  
8 voting." 60 Fed. Reg. 35292, 35294 (July 6, 1995). *See also* *FEC v. Christian Coalition*,  
9 52 F. Supp. 2d 45, 62 (D.C.D.C. 1999) ("*Christian Coalition*") ("as the *Buckley* court  
10 recognized when it included the verb "support" in its non-exclusive list. . . express  
11 advocacy also includes verbs that exhort one to campaign for, or contribute to, a clearly  
12 identified candidate").

13 **4. Coordination with Candidates and Campaigns**

14 An "independent expenditure" is defined in the Act as: an expenditure by a  
15 person expressly advocating the election or defeat of a clearly identified candidate which  
16 is made without cooperation or consultation with any candidate, or any authorized  
17 committee or agent of such candidate, and which is not made in concert with, or at the  
18 request or suggestion of, any candidate or agent of such candidate. 2 U.S.C. § 431(17).<sup>8</sup>  
19 Conversely, expenditures made by any person in cooperation, consultation or concert,  
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<sup>7</sup> Two appellate courts have determined that part (b) of this regulation is invalid. *Maine Right to Life v. FEC*, 98 F.3d 1 (1<sup>st</sup> Cir. 1996) and *FEC v. Christian Action Network*, 110 F.3d 1049 (4<sup>th</sup> Cir. 1997). The probable cause recommendations contemplated by this Brief are based entirely on part (a) of the regulation, and do not involve any legal conclusions under part (b).

<sup>8</sup> On November 30, 2000, the Commission approved a final rule concerning Coordinated General Public Political Communications. 65 Fed. Reg. 76,138 (December 6, 2000). The new regulation, codified at 11 C.F.R. § 100.23, became effective on May 9, 2001. *See* 66 Fed. Reg. 23,537 (May 9, 2001)

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1 with, or at the request or suggestion of, a candidate, his authorized political committees,  
2 or their agents, shall be considered to be a contribution to such candidate. 2 U.S.C. §  
3 441a(7)(B).

4 In the context of expenditures by outside groups which are not political party  
5 committees, the Commission has considered potential coordination that took place prior  
6 to the effective date of 11 C.F.R. § 100.23 under the standards set forth in *FEC v.*  
7 *Christian Coalition*, 52 F. Supp. 2d 45 (D.D.C. 1999). In addressing the issue of what  
8 constitutes “coordination” with a candidate, the *Christian Coalition* court discussed two  
9 general ways in which coordination could occur: first, that “expressive coordinated  
10 expenditures made at the request or the suggestion of the candidate or an authorized  
11 agent” would be considered coordinated; and second, “absent a request or suggestion, an  
12 expressive expenditure becomes ‘coordinated’ where the candidate or her agents can  
13 exercise control over, or where there has been substantial discussion or negotiation  
14 between the campaign and the spender over, a communication’s: (1) contents; (2) timing;  
15 (3) location, mode or intended audience (e.g., choice between newspaper or radio  
16 advertisement); or (4) ‘volume’ (e.g., number of copies of printed materials or frequency  
17 of media spots.” *Id.* at 92.<sup>9</sup>

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<sup>9</sup> In the *Christian Coalition* decision, the court also rejected the assertion that “express advocacy” was required for expenditures to be considered coordinated. *Christian Coalition*, 52 F. Supp.2d at 87-89. The district court stated that “importing the ‘express advocacy’ standard into § 441b’s contribution prohibition would misread *Buckley* and collapse the distinction between contributions and independent expenditures in such a way as to give short shrift to the government’s compelling interest in preventing real and perceived corruption that can flow from large campaign contributions.” *Christian Coalition*, 52 F. Supp.2d at 88.

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1 In devising its legal standard for coordination, the court drew a distinction  
2 between “‘expressive,’ ‘communicative’ or ‘speech-laden’ coordinated expenditures”  
3 which are subject to the highest form of First Amendment protection and situations in  
4 which the spender finances “non-communicative materials” for a candidate’s campaign.  
5 *Christian Coalition*, 52 F. Supp.2d at 85, fn. 45. The court made explicit that its standard  
6 only applied to expressive coordinated expenditures. *Id.* at 91.

7 **B. FACTS**

8 **1. Background**

9 **a. The Formation of Triad**

10 In early 1994, Carolyn Malenick met Robert Cone, a wealthy Pennsylvania  
11 businessman, through an organization for political conservatives called the Council for  
12 National Policy (“CNP”). *See* Dep. Tr. of Robert Cone (“Cone Dep. Tr.”) at 80.  
13 Mr. Cone testified that during the following summer, Ms. Malenick, who reportedly was  
14 working as a consultant for Eagle Forum, assisted him with a \$500,000 advertising  
15 campaign sponsored by Eagle Forum, and financed by Mr. Cone, which advocated  
16 against certain Clinton Administration health care proposals.<sup>11</sup> *Id.* at 84-85, 90-92 and  
17 103-106. Mr. Cone further testified that Ms. Malenick was involved in an Eagle Forum  
18 project for interviewing candidates in connection with the 1994 elections, and she  
19 provided Mr. Cone with information obtained through this process. *Id.* at 92 and 99-101.

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<sup>11</sup> Prior to 1995, in addition to working for Eagle Forum, Carolyn Malenick reportedly worked as a fundraiser for a variety of organizations, including: The Viguerie Company, The Oliver North Defense Trust, Freedom Alliance, and the North for Senate campaign.



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1 Mr. Cone testified that, in late 1994, Ms. Malenick told him that she was  
2 interested in starting a for-profit business that would represent the interests of donors in  
3 connection with their political and charitable contributions. *Id.* at 92, 103 and 107.  
4 Ms. Malenick told Mr. Cone that this enterprise (which would become Triad/CSM)  
5 would provide potential donors with detailed information and focused research on  
6 political groups and candidates. *Id.* at 120-121. Mr. Cone testified that “the original  
7 concept, I think, of TRIAD and my understanding was that she [Malenick] wanted to  
8 develop wealthy donors both for electing or working on getting elected conservative  
9 Republican pro-life candidates.” *Id.* at 115.<sup>12</sup>

10 In January 1995, Ms. Malenick began operating Triad/CSM as an unincorporated  
11 entity. Triad Stips. at ¶ 1.1. In 1995 and 1996, Ms. Malenick filed tax returns for  
12 Triad/CSM as a sole proprietorship of Carolyn Malenick d/b/a Triad Management  
13 Services. Ms. Malenick caused Triad Inc. to be incorporated in May 1996. Triad Stips.  
14 at ¶ 1.2-1.3.

15 Starting in early 1995, and continuing though at least the end of 1996, Mr. Cone  
16 began to financially underwrite Triad’s efforts to find and develop a network of

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<sup>12</sup> Mr. Cone also testified that the original concept for Triad embraced developing donors to broaden or widen donations to charitable organizations. *Id.* However, Mr. Cone admitted that he was unaware of Triad making any efforts to develop donors to any charitable cause. *Id.* at 115-117. Triad did not produce any documentary evidence that it made efforts to audit the activities of, or encourage giving to, any charitable organization. Although Triad did maintain records which reflected the fact that certain individuals who made political contributions through Triad also had made charitable donations during the same year, Triad appears to have had no other involvement with any charitable organizations or causes.

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1 conservative donors who would give to the types of causes and candidates that he wished  
2 to support himself.<sup>12</sup> Cone Dep. Tr. at 136, 417-418. Although Mr. Cone testified that he  
3 made no advance commitment to finance Triad's activities, he also testified that, during  
4 1995-1996, he financed both Triad entities on an "as [you] go basis" so as to meet Triad's  
5 cash flow needs. *Id.* at 128, 135-136, 150, 185, 189-190, 470. Mr. Cone testified that he  
6 made payments to Triad whenever Ms. Malenick advised him of pending cash flow  
7 requirements. *Id.* at 185.

8 During the 1996 election cycle, Mr. Cone provided over \$1 million directly to  
9 Triad (with Triad/CSM receiving payments of \$200,000 in 1995 and \$465,500 during the  
10 first half of 1996; and Triad Inc. receiving payments of \$426,621 during the latter half of  
11 1996). See Triad Stips. at ¶¶ 7.1(a), 7.2(a) and 7.3(a), Cone Dep. Tr. at 144. Cone Dep.  
12 Tr. at 144. These direct payments from Mr. Cone represented more than 85% of Triad's  
13 receipts during this period. Further, as discussed below, a substantial portion of Triad  
14 Inc.'s other receipts came from payments made to it under management consulting  
15 contracts by CR and CREF, which had no 1996 activities other than Triad-managed  
16 advertising programs. A large portion of CR and CREF's funding was provided by  
17 Mr. Cone, who contributed \$400,000 to CR and \$500,000 to CREF between July and  
18 October 1996. See CR Stips. at ¶ 2.12 and CREF Stips. at ¶ 3.6).<sup>13</sup>

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<sup>12</sup> At the same time that he was financing Triad's efforts, which were related to candidates for federal office, Mr. Cone also established a Pennsylvania state political action committee called the Paragon Project that supported selected conservative Republican candidates on a state and local level. Cone Dep. Tr. at 41-47.

<sup>13</sup> A substantial portion of CR and CREF's other receipts came from the Economic Education Trust ("EET"), which was funded entirely by Wichita, Kansas-based Koch Industries Inc. ("KII"). EET contributed over \$1.8 million to the two Triad-managed groups (\$858,000 to CR and \$970,000 to CREF). See CR Stips. at ¶ 2.12 and CREF Stips. at ¶ 3.6.

1                                    **b.     Triad's Statements of Purpose**

2                    Throughout 1995 and 1996, Triad/CSM and Triad Inc. distributed promotional  
3 materials that emphasized Triad's electoral mission and its ties to the Republican Party's  
4 congressional leadership.<sup>15</sup> In numerous publications and in a widely-distributed  
5 videotape presentation, the Triad entities repeatedly stated that its primary "GOALS" for  
6 1996 were to:

- 7                    1)     *Return Republican House Freshmen;*  
8                    2)     *Increase by 30 the Republican House Majority; [and]*  
9                    3)     *Increase Senate Republicans to a Filibuster-proof 60.*

10                   See Triad Stips. at ¶ 2.1(b) (emphasis in original).<sup>16</sup>

11                   In January 1995, Carolyn Malenick asked Congressman Edward Royce, who was  
12 serving as the National Republican Congressional Committee's ("NRCC's") Vice  
13 Chairman for candidate recruitment, to sign a letter, drafted for his signature, endorsing  
14 Triad's role in helping to re-elect the newly elected Republican House Freshmen.

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<sup>15</sup>                   Further, starting in February 1996, Triad began using letterhead advertising a "Privatized Republican National Coalition" ("PRNC") which also included the elephant logo recognized as the symbol of the Republican Party, as "A Project" of Triad" or later as "A Project of Triad Inc." See Triad Stips. at ¶¶ 2.3 and 4.1.

<sup>16</sup>                   Some of the Triad documents setting forth these Goals include: Triad/CSM Primary Audit Summary, FECTR 0000113A; Triad Inc. promotional materials, TR10 000403; Triad Inc. Summary of PRNC, FECTR 000136; Triad/CSM-Triad Inc. Videotape entitled "Due Diligence for a 1996 Majority"; Triad Inc. Internal Memorandum dated 1/14/97 (Revised 5/28/97)(which discussed Triad's goals for the preceding year). TR10 000534.

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17 See January 26, 1995 letter nominally from Edward Royce to Carolyn Malenick.  
18 Congressman Royce informed the Commission staff, in response to an informal discovery  
19 request, that he understood Ms. Malenick planned to distribute this letter to conservative  
20 donors to generate interest in Triad and raise money for conservative candidates.

21 In a March 1995 mass mailing, Ms. Malenick informed potential donors that:

22 [a] major part of TRIAD's time in the next two years will  
23 be working with the 104<sup>th</sup> Congress Freshmen and targeting  
24 approximately 20 other Democrat held seats. Regardless of  
25 the GOP Presidential nominee, the focus must be on  
26 maintaining the House majority. Excitement with this  
27 project is building daily on Capitol Hill.

28 TMS 000560.<sup>17</sup>

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<sup>17</sup> This same letter which indicates that Triad will be "targeting approximately 20 other Democratic held seats" also declares that "The overall purpose is to maintain integrity and accountability through financial planning that is driven by the contributor. Rest assured that TRIAD does not intend to proselyte or sway any contributors, but will assist in effectively placing their contributions to work for their ideals and to support their intent in giving." TMS 000560. Notwithstanding this statement, and as discussed below, Triad's later publications do expressly advocate that donors make political contributions to certain candidates.

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1 During the first half of 1995, Triad sent out a promotional brochure, which quoted  
2 Congressman Royce and Curt Anderson, Political Director for the Republican National  
3 Committee, as supporting Triad's efforts to keep the Republican majority in Congress.  
4 See Triad Stips. at ¶ 2.1(d) and FECTR 000104-105. Triad also conveyed the impression  
5 that it was working with the Republican Party leadership in various mailings that it sent  
6 to potential donors during 1995.

7 For example, in a July 1995 letter to a potential donor, Carolyn Malenick stated  
8 that Triad had given Congressman Royce an overview of her recent meetings with  
9 potential donors and that she planned to meet again with Congressman Royce to discuss  
10 candidate recruitment. See July 10, 1995 Letter from Carolyn Malenick to Tom Pernice.  
11 TMS 001013. This letter also indicates that Congressman David McIntosh "has offered  
12 to travel and speak on behalf of the TRIAD project discussing the freshmen or targeting  
13 Democrats." *Id.* This same letter states that Carlos Rodriguez has agreed to become the  
14 Political Director for TRIAD, and is "putting the final arrangements in place for a  
15 comprehensive Congressional district analysis *to be done in coordination with the RNC's*  
16 *field staff* during the month of August." *Id.* (emphasis added).<sup>18</sup>

17 In the Fall of 1995, Triad prepared a document entitled "Activities Report:  
18 January - September 1995" which stated that

19 In January, as Speaker Gingrich and the House of  
20 Representatives started work on fulfilling the 'Contract  
21 with America', TRIAD began quietly working *with key*  
22 *members of Congress* in laying the groundwork to re-elect

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<sup>18</sup> Although Mr. Rodriguez testified that he occasionally met with RNC officials to gather information and to discuss the 1996 elections, he did not recall having the type of close working relationship described by this document. Rodriguez Dep. Tr. at 72-78.

1 conservative freshmen and expand the House conservative  
2 majority.

3 See Triad Activities Report, KI 00507 (emphasis added). According to this Activities  
4 Report, a list of Triad's accomplishments during the first nine months of 1995 included:

5 \* Working with key members of the Republican House  
6 Leadership, the RNC and the NRCC, TRIAD initiated an  
7 audit of every freshman Republican's Washington and  
8 district office operations to gauge their strengths and  
9 weaknesses and provide advice where needed. Thanks to  
10 the early work, steps now are being taken to shore up those  
11 who need help.

12 \* Triad was the largest contributor to, and key advisor in, the  
13 successful election of the new, conservative chairman of  
14 the College Republican National Committee who is  
15 committed to assist candidates in the 1996 elections.

16 \* When asked by a key Congressional ally, TRIAD  
17 coordinated a last minute "Get Out the Vote" phone  
18 program (credited for winning) in a successful conservative  
19 candidate's special election for a seat in the California  
20 Legislature.

21 \* In a few months, Triad has taken an advisory role among  
22 key conservative political action committees. As a result,  
23 we have built coalitions that will provide essential targeted  
24 assistance to candidate's [sic] campaigns in winnable  
25 districts.

26 *Id.* (separate paragraphs regarding donor recruitment omitted).<sup>19</sup>

27 In a February 5, 1996 newsletter, Triad informed potential donors about the AFL-  
28 CIO's announced plans to target vulnerable Republican incumbent congressmen and to  
29 spend approximately \$35 million in connection with the 1996 congressional elections.

30 See Triad Stips at ¶ 4.2, FA16-17. This Fax Alert stated that:

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<sup>19</sup> The investigation did not produce any documentary evidence regarding Triad's and Ms. Malenick's reported efforts to elect the chairman of the College Republicans or their involvement in coordinating a GOTV phone program for a California state election.

1 The work of TRIAD for Republicans has been comparable  
2 to that of the work of organized unions for the Democrats.  
3 The unions and other liberal interest groups have served as  
4 the "rapid fire" to the Democrats. There has been NO  
5 "rapid fire" for the Republicans – until now, and TRIAD is  
6 the vehicle.

7 • Every Senator, Congressman, Conservative Leader and  
8 Political Action Committee that saw TRIAD work on a  
9 small scale in 1995 became a believer and a supporter.

10 • TRIAD has been asked in the last week by GOP  
11 Freshmen to assist in the planning and execution of a  
12 media campaign to help offset union attacks.<sup>20</sup>

13 • The NRCC has recently asked that TRIAD remain  
14 steadfast in working with its participants to raise \$\$\$  
15 because Republicans will need it.

16 *Id.* at FA17 (bolding in original).

17 Similarly, Triad's 1996 promotional materials claimed that:

18 TRIAD has already put in place a team of political advisors  
19 and interested organizations, and is working on assembling  
20 a team of donors to work together in 1996 for the same  
21 goal: Retaining GOP control of Congress and the advance  
22 of a conservative agenda. TRIAD believes that its activities  
23 will ultimately complement the efforts by others to regain  
24 GOP control of the White House.

25 See Triad Stips. at ¶ 2.1(a) and FECTR 000131.

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<sup>20</sup> None of the Triad employees and consultants that the Commission staff deposed or interviewed could offer any details as to the basis for this statement regarding a request from GOP Freshman for assistance in planning and execution of a media campaign to help offset union attacks. Carolyn Malenick, who was identified as the author of this Fax Alert, took the Fifth Amendment rather than provide deposition testimony. While Triad produced one document which indicates that it had discussions with a potential vendor about a "Freshman Ads/Video" project that would focus, and highlight the accomplishments of, the Republican Freshman Congressmen as a group, those discussions do not appear to have resulted in any advertisements actually being produced or broadcast. See 6/21/96 Scott Howell & Co. Memorandum to Carolyn Malenick re: Freshman Ads/Video, TR11 00002-04. As discussed below, however, Triad Inc. eventually did initiate various candidate-specific advertising campaigns through CREF which criticized prior union attacks on individual Republican Freshmen congressmen.

1                                    **c.        Triad Structure and Organization**

2                    In February 1995, Triad's counsel sent Mr. Cone a letter thanking him for  
3                    agreeing to serve on Triad's "advisory board." CONE 000119. Although Mr. Cone  
4                    testified that he did not recall serving on an advisory board, he did acknowledge  
5                    providing Triad and Ms. Malenick with financing and business advice. Cone Dep. Tr. at  
6                    158, 488-498. Carolyn Malenick, who exercised control over all of Triad's activities  
7                    during 1995-1996, was in frequent contact with Mr. Cone. *Id.*<sup>20</sup> One internal Triad  
8                    document even made a reference to Triad having an "outside office" in "Pennsylvania"  
9                    which appears to have been a reference to Mr. Cone. FECTR 000437, Cone Dep. Tr. at  
10                   211-213.

11                   Starting in approximately July 1995, Triad/CSM retained a California-based  
12                   political consultant named Carlos Rodriguez to serve as its nearly full time Political  
13                   Director. Triad Stips at ¶ 1.7 and CM 000461. Mr. Cone, who was providing the funds  
14                   to perform the political audits, interviewed Mr. Rodriguez prior to his retention by Triad.  
15                   Rodriguez Dep. Tr. at 39-41, Cone Dep. Tr. at 364-368. During the latter half of 1995,  
16                   Mr. Rodriguez received payments of \$32,727 from Triad/CSM. *See* CM 000461.  
17                   Starting in the late fall of 1995, Triad/CSM opened an office in Washington, D.C., and  
18                   hired Meredith O'Rourke, a former fundraiser with the State Republican parties of South  
19                   Carolina and Virginia, to serve as its Finance Director. Triad Stips at ¶ 1.2-1.4.

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<sup>20</sup>        Telephone records produced during the investigation show that between May and December of 1996, the period for which telephone records were available, 101 facsimiles were sent and an additional 144 telephone calls were made from Triad's offices or cell phone accounts to Mr. Cone's home and office. Cone Dep. Tr. at 488-498. These records do not reflect telephone calls that Mr. Cone may have initiated, or calls placed during earlier periods. In addition, Mr. Cone made regular visits to Triad's offices in Washington, D.C.



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1           During 1995, Triad/CSM made disbursements of \$221,496, of which substantial  
2 portions went to paying Mr. Rodriguez, to finance travel to meet with prospective donors,  
3 to paying salaries, and to cover various start-up and overhead costs. *See* Triad Operating  
4 Budget February 95-December 95: Year End Report for December 31, 1995.  
5 CM 000689.

6           At the beginning of 1996, Triad agreed to pay Mr. Rodriguez a retainer of \$20,625  
7 per month over a two year period (for a total payment of \$495,000) in exchange for  
8 devoting approximately 90% of his time to Triad projects. *See* Rodriguez Dep. Tr. at pp.  
9 31-38. In addition to his own services, Mr. Rodriguez billed Triad for the salary his firm  
10 paid to a research analyst named Jason Oliver, and a computer consultant/database  
11 manager named Sabina Pellissier. During the first half of 1996, Triad/CSM paid  
12 Mr. Rodriguez \$123,750 in consulting fees, \$11,929 for Mr. Oliver's salary and benefits,  
13 and \$8,000 for political database services provided by Ms. Pellissier. CSM d/b/a TRIAD  
14 General Ledger at pp. 10-12. During the latter half of 1996, Triad Inc. paid  
15 Mr. Rodriguez \$103,125 in consulting fees, \$13,137 for Mr. Oliver's salary and benefits,  
16 and \$10,000 for political database services provided by Ms. Pellissier. TRIAD Inc.  
17 General Ledger at pp. 13 and 17.

18           Triad also employed two other consultants for specific election-related tasks  
19 during 1996. Between April and June of 1996, Triad/CSM employed a consultant named  
20 Cleta Mitchell to work on audits of Freshmen Republican congressmen's re-election  
21 efforts, and to serve as a Project Manager in connection with a Triad-managed CREF

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1 advertising campaign.<sup>21</sup> Triad Stips at ¶ 1.9. During 1996, Triad/CSM paid Ms. Mitchell  
2 fees and expenses totaling \$28,013. *See* TR5 000009 and CSM d/b/a TRIAD General  
3 Ledger at p. 10. Between June and October 1996, Triad also employed a California-based  
4 political consultant named William ("Bill") Saracino to conduct "political audits" on  
5 1996 congressional races. Triad Stips at ¶ 1.8. For services performed in June 1996,  
6 Triad/CSM paid Mr. Saracino \$4,290.68, plus expenses. CSM d/b/a TRIAD General  
7 Ledger at p. 10. For services performed between July and October 1996, Triad Inc. paid  
8 Mr. Saracino \$17,500, plus expenses. TRIAD Inc. General Ledger at pp. 13.

9 In early 1996, Triad hired Kathleen McCann to serve as its Director of  
10 Administration. Triad Stips at ¶ 1.5. Beginning in mid-1996, Triad Inc. hired  
11 Ms. Malenick's sister, Anna Malenick Evans, to serve as Triad's part-time bookkeeper.  
12 Triad Stips at ¶ 1.6.

13 During 1996, Triad/CSM and Triad Inc., made combined disbursements of  
14 \$1,425,089 (\$477,373.83 by Triad/CSM and \$947,715 by Triad Inc.), of which  
15 substantial portions went to: fees charged by Mr. Rodriguez and other consultants, travel  
16 expenses (some of which were designated "political" and some of which were designated  
17 "client"), publication distribution expenses (including facsimile, postage and delivery  
18 service fees), telephone expenses, managed advertising programs<sup>22</sup>, salaries for Triad  
19 staff, and various overhead costs. *See* Triad Stips at ¶ 8.1, TR5 000008-10.; Triad  
20 Operating Budget 2<sup>nd</sup> Quarter- June 1996, CM 000685-86 (for Triad/CSM), Triad 96

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<sup>21</sup> Although Ms. Mitchell is a licensed attorney, she confirmed that the work she did for Triad in 1996 did not involve providing any sort of legal advice.

<sup>22</sup> Triad/CSM and Triad Inc. made expenditures of \$392,469 in support of CREF and \$14,271 in support of CR during 1996.

1 Operating Budget January 96-December 96: 4<sup>th</sup> Quarter- December 1996 (for Triad  
2 Inc.).<sup>23</sup>

3 d. **The Non-Profit Corporations: CREF and CR**

4 During the latter half of 1996, Triad Inc. managed all of the activities of CREF  
5 and CR, two non-profit corporations with no offices or employees of their own. Acting  
6 on CREF's and CR's behalf, Triad Inc. raised funds for, and managed the production and  
7 distribution, of approximately \$3 million in television, radio, direct mail and telephone  
8 bank advertising prior to the 1996 congressional elections.

9 In addition to contributing substantial sums to both CREF and CR, Robert Cone  
10 accompanied Ms. Malenick to meetings with CREF Chairman Lyn Nofziger and various  
11 vendors at which the advertising campaigns were planned. See Nofziger Interview  
12 Memorandum, Cone Dep. Tr. at 450-455, Vendor Subpoena Responses.

13 i) **CREF**

14 On June 20, 1996, Carolyn Malenick arranged to incorporate CREF as a District  
15 of Columbia corporation.<sup>24</sup> Triad Stips. at ¶1.12-1.13. From June 20, 1996 through the

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<sup>23</sup> During 1995-1996, Triad had few activities that were not related to the 1996 elections. At some point in 1995, Triad/CSM was reimbursed \$250 for providing assistance to an individual who was preparing a collection of White House Christmas cards. See Triad Stips. at ¶ 2.1(d) and ¶ 7.1(b) (noting receipt of \$250 from Mary Seeley). In 1996, at Robert Cone's request, Triad Inc. began to manage an effort to research and test ways in which pro-life groups could best present their message to the public, which was called the "Choose Life Project." Triad Inc. records, as confirmed by the deposition testimony of Mr. Rodriguez, indicate that Triad's disbursements for this Project represented no more than 10% of Triad/CSM and Triad Inc.'s overall activities. See TR5 000009 (1996 Budget Document shows \$145,091.54, out of a total disbursements of \$1,425,089.71, being spent on Life Media Campaign, which appears to have been another term for the Choose Life Project), Cone Dep. Tr. at 136, Rodriguez Dep. Tr. at 375-376 (testifying that he spent less than 5% -10% of his Triad-related time on the Choose Life Project).

<sup>24</sup> CREF was initially incorporated under the name Citizens for the Republic Education Committee, but its name was changed from "Committee" to "Fund" on July 23, 1996.

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1 end of 1996, Carolyn Malenick, Meredith O'Rourke and Kathleen McCann, who were  
2 employees of Triad, served, respectively, as President, Treasurer and Secretary of CREF,  
3 and performed their duties from Triad's offices without receiving any additional pay. *Id.*  
4 at 1.13-1.14. Triad Inc. opened an account in CREF's name at Crestar Bank, and Triad  
5 personnel made deposits to, and withdrawals from, the CREF bank account. *Id.* at 1.17.

6 On or about September 26, 1996, Triad Inc. entered into a written consulting  
7 agreement with CREF. Triad Stips. at ¶1.14-1.15. The agreement called for Triad to  
8 receive a commission from CREF in connection with the placement and production of  
9 advertisements and fundraising. The agreement gave Triad discretion in deciding "the  
10 means by which it will provide the Services" for CREF with instruction from CREF  
11 officers (all of whom were Triad employees). *Id.* Triad was responsible for managing all  
12 of CREF's activities, which included soliciting and accepting funds for the placement and  
13 production of advertising programs on behalf of CREF. *Id.* at ¶ 1.18. Triad Inc. also  
14 controlled the selection of media markets, the approval of scripts and the authorizing of  
15 expenditures for the production and placement of CREF advertisements. *Id.* at ¶ 1.19.

16 From June through December 1996, Lyn Nofziger, Carlos Rodriguez and David  
17 Gilliard served as the directors of CREF. *Id.* at 1.13(b). The Board did not meet on a  
18 regular basis, and may have met, with at least one member attending by teleconference,  
19 on only one or two occasions during 1996. Gilliard Dep. Tr. at 37-40. In an interview  
20 with Commission staff, Mr. Nofziger, who was the nominal chairman of CREF, told  
21 Commission staff that he was no more than a figurehead who loaned his name to Carolyn  
22 Malenick's organization. While Mr. Nofziger had no control over CREF's activities, he

1 was briefed on the group's public advertising campaigns so that he could serve as a  
2 spokesman to respond to media inquiries.

3 When asked to describe CREF's purpose, Mr. Nofziger told Commission staff  
4 that CREF's advertisements were designed so that Carolyn Malenick could educate the  
5 public about what Mr. Nofziger termed the "evils of the Democrats." When asked if this  
6 advertising was intended to portray certain candidates in a positive or negative light,  
7 Mr. Nofziger said that the advertisements certainly attempted to put "a black hat" on  
8 various Democratic candidates and either directly or indirectly put "a white hat" on  
9 various Republican candidates. Mr. Nofziger stated his belief that the placement of the  
10 advertisements, all of which mentioned candidates by name, was related to the  
11 congressional election in the particular media markets where the ads ran prior to the 1996  
12 election. Mr. Nofziger also told Commission staff that it was CREF's conscious intent to  
13 avoid engaging in express advocacy in its public advertising, so as to avoid any  
14 requirement that it report to the FEC. As discussed *infra*, however, there is evidence that  
15 a substantial portion of CREF's advertisements were coordinated with Republican  
16 congressional candidates in the districts where they were broadcast or distributed.

17 ii) CR

18 Citizens for Reform ("CR") is a Virginia corporation that was incorporated by  
19 Peter Flaherty, who would become its President, on or about May 13, 1996. Triad Stips.  
20 at ¶1.20. Between May 13, 1996 and September 1, 1996, CR received no funds,  
21 sponsored no activities, and made no expenditures of any kind. *Id.* at ¶ 1.22. Beginning  
22 no later than September 5, 1996, Triad Inc. began to solicit and accept funds for the  
23 purpose of funding a series of advertisements by CR. *Id.* at ¶ 1.23, TMS 000399. On or

1 about September 26, 1996, Triad entered into a consulting agreement with CR, which  
2 confirmed earlier understandings between Peter Flaherty and Ms. Malenick. *Id.* at ¶ 1.24.  
3 The agreement called for Triad Inc. to provide services in connection with the placement  
4 and production of advertisements, and gave Triad Inc. discretion in deciding “the means  
5 by which it will provide the Services” for CR. CR was to pay Triad Inc. a commission on  
6 all funds raised and all direct expenses incurred for advertising efforts. *Id.*

7 Triad was responsible for soliciting and accepting funds for the placement and  
8 production of advertising programs on behalf of CR. *Id.* at ¶ 1.27 Agents of Triad,  
9 particularly Ms. Malenick and Mr. Rodriguez, were responsible for selecting media  
10 markets, approving the scripts, and authorizing expenditures for the production and  
11 placement of advertising sponsored by CR during 1996. *Id.* Although Mr. Flaherty  
12 testified that he was kept informed of Triad Inc.’s activities on behalf of CR so that he  
13 could provide oversight, he did not recall providing Triad Inc. with any detailed  
14 directions on how to carry out the advertising campaigns. Flaherty Dep. Tr. at 192-193.  
15 Mr. Flaherty testified that it was CR’s conscious intent to avoid engaging in express  
16 advocacy in its public advertising, so as to avoid any requirement that it report to the  
17 FEC. As discussed *infra*, however, there is evidence that a substantial portion of CR’s  
18 advertisements were coordinated with Republican congressional candidates in the  
19 districts where they were broadcast or distributed.

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1                   2.     **Triad Funding<sup>25</sup>**

2             Although Triad's promotional materials and its answers to Commission discovery  
3 requests assert that it was a "for-profit business" during the 1996 election cycle, the  
4 evidence shows that Robert Cone paid virtually all of Triad's expenses during 1995-1996.  
5 Triad has stated that it initially did not have a set fee structure, and that Ms. Malenick  
6 operated with the view that fees could be negotiated on an individual or project basis.  
7 See 7/16/99 Triad Response to Questions at 5-6. The evidence shows that Triad solicited  
8 support in the form of contributions rather than set fees for any service that it might  
9 provide. See Factsheet on TRIAD Structure and TRIAD Funding, TMS 000809. Even  
10 after creating a fee schedule in mid-1996, however, Triad Inc. did not, during the  
11 remainder of 1996, send any bills or invoices to individuals who received its materials or  
12 to those who made political contributions through Triad Inc.

13                   a.     **Triad/CSM**

14             During 1995, Triad/CSM had total financial receipts of \$237,250 from six  
15 individuals, of which \$200,000 came from Robert Cone. Triad Stips. at ¶ 7.1;  
16 TMS 000239.<sup>26</sup> Triad/CSM received funds from Mr. Cone in 1995 on the following  
17 dates:

18	2/24/95	\$ 25,000
19	7/17/95	\$ 25,000
20	9/20/95	\$ 50,000

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<sup>25</sup>     The funding of CREF and CR advertising campaigns will be discussed below.

<sup>26</sup>     The other five individuals who sent Triad/CSM funds in 1995 were: Mary Seeley - \$250, Barbara Christian - \$2000, Anne Drexel - \$5,000, Robert Eichenberg - \$10,000 and Lorena Jaeb -

1                    10/21/95                    \$ 25,000  
2                    11/15/95                    \$ 25,000  
3                    12/30/95                    \$ 50,000

4            Mr. Cone testified that he regarded his payments as an investment in developing a  
5 network of conservative donors, contingent only on Triad making some advancement in  
6 developing major donors for the types of political and charitable causes in which he was  
7 interested. Cone Dep. Tr. at 144. Mr. Cone recorded transfers to Triad in his personal  
8 accounting records as "GI [Gift]: Political Indirect" rather than as a fee for services  
9 rendered. *Id.* at 502, Robert Cone Accounting Records-Cone Dep. Ex. 31. There is no  
10 documentary evidence of Triad ever sending Mr. Cone, or any other "client,"  
11 a bill or an invoice during the 1996 election cycle.<sup>27</sup> Rather than offering services in  
12 exchange for a definite fee, the evidence obtained during the investigation shows that  
13 Triad/CSM and Triad Inc. relied on conservative donors to make voluntary  
14 "contributions" to support their activities.<sup>28</sup>  
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\$20,000. Triad Stips. at ¶ 7.1(b). Triad produced no records which would explain why these individuals sent Triad funds in these amounts.

<sup>27</sup> Although Mr. Cone produced a Triad Inc.-generated document entitled "Statement of Account" generated in 1998, which seemed to indicate that Triad/CSM and Triad Inc. charged him a set amount per month during 1995-1996, he testified that this document did not accurately reflect his arrangement with Triad/CSM or Triad Inc. Cone Dep. Tr. at 505-510, CONE 000046-58.

<sup>28</sup> In a March 30, 1995 mass mailing, Triad, whose only financial receipts prior to this date were from Mr. Cone, stated that its efforts had been "well received with \$50,000 contributed or pledged pending the completion of an Advisory Board." TMS 000560 (emphasis added). Triad/CSM also prepared a fact sheet regarding "Triad Funding" which stated that "Any ***contribution*** made directly to TRIAD will not count against your per year political contribution limit. See Factsheet on TRIAD Structure and TRIAD Funding, TMS 000809 (italicized bold emphasis added, underlined emphasis in original).

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reimbursements).<sup>29</sup> Triad/CSM received these funds from Robert Cone in 1996 on the following dates:

2/6/96	\$ 75,000
3/4/96	\$ 50,000
4/2/96	\$ 50,000
4/30/96	\$ 50,000
6/1/96	\$150,000
6/26/96	\$ 80,000
7/19/96	\$ 5,000
8/8/96	\$ 2,500
9/9/96	\$ 3,000

Again, rather than charging fees for services, the evidence shows that Triad/CSM continued to rely on "contributions" or "donations" from Mr. Cone and a handful of other individuals. For example, an individual named Foster Freiss provided Triad/CSM a \$1,000 check with a cover letter that stated:

*See* January 22, 1996 letter from Foster Freiss to Carolyn Malenick (emphasis added), TMS 000819. In response, Carolyn Malenick wrote a memorandum stating "Thank you

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<sup>29</sup> The other three individuals who sent funds to Triad/CSM in 1996 were: Beverly Danielson - \$1,000, Foster Freiss - \$6,000 and Lorena Jaeb - \$10,000.

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1 so very much for your \$1,000 contribution." See February 2, 1996 Malenick  
2 memorandum to Foster Freiss (emphasis added), TMS 000816. Later, Mr. Freiss sent  
3 Triad another \$5,000 check with a cover letter stating "Seeing you in action last Thursday  
4 was a shining endorsement of the value of Triad! Enclosed is a \$5,000 check toward your  
5 organization's overhead and expenses." See February 7, 1996 letter from Foster Freiss to  
6 Carolyn Malenick, TMS 000814. Similarly, Mr. Cone testified that he was never  
7 obligated to pay any particular amount, or to continue paying Triad's expenses. Cone  
8 Dep. Tr. at 144.

9 b. Triad Inc.

10 After its incorporation in May 1996, Triad received payments of \$606,571 from  
11 eleven individuals and four corporations, of which \$426,621 came from Robert Cone, and  
12 \$152,000 of which were commissions on Triad Inc.'s contracts to manage the activities of  
13 CREF and CR.<sup>30</sup> Triad Stips. at ¶ 7.3. Triad Inc. received funds from Mr. Cone in 1996  
14 on the following dates:

15	7/9/96	\$ 2,500
16	7/22/96	\$ 50,761
17	8/2/96	\$ 70,000
18	8/2/96	\$ 50,000
19	8/8/96	\$ 40,000

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<sup>30</sup> The other individuals contributed to Triad in the following amounts: \$100, \$100, \$150, \$500, \$500, \$500, \$1,500, \$1,500, \$4,000, \$5,000 and \$5,000. The five individuals who sent Triad Inc. more than \$1,000 were: Merle Stoltzfus - \$1,500, Patsy Frizzell - \$1,500, Edward Cone - \$4,000, Robert Eichenberg - \$5,000 and LaDorna Eichenberg - \$5,000. The two corporations, other than CR and CREF, which sent funds to Triad were Koch Industries - \$2000 and Cracker Barrel - \$8000. Triad Stips. at ¶ 7.3(b)-(c).

1	8/8/96	\$ 7,500
2	8/26/96	\$ 50,000
3	9/9/96	\$100,000
4	10/3/96	\$ 50,000
5	10/30/96	\$ 5,500

6 Mr. Cone testified that his financial support of the corporate Triad entity was  
7 made on the same "as you go" basis as his earlier financial support of the unincorporated  
8 Triad/CSM. Cone Dep. Tr. at 144.

9 At about the same time that it incorporated, Triad began to distribute what appears  
10 to be a schedule of fees to some, but not all, of the prospective donors that it contacted.  
11 See Triad Stips. at ¶ 2.2, See FECTR000078-000103/TR10000521-10000540. See  
12 7/16/99 Triad Response to Questions at 4 (stating that the fee structure was included in  
13 June 1996 mass mailing of Triad videotape). Although Triad received funds from some  
14 individuals and groups during 1996 that might possibly correspond to some aspects of the  
15 fee schedule, Triad apparently did not send out any bills or invoices, or otherwise request  
16 payment for specific services, during 1996. See Triad Stips. at ¶ 2.6.

17 Beginning in approximately June 1996, Triad also distributed a memorandum to  
18 "Fellow Triad Clients and Prospective Clients" from Robert Cone, which stated:

19 During the primary cycle, as TRIAD has been building the  
20 product and service, they have been providing you with  
21 analyses and reports at no cost, to show you what kind of  
22 service and product they were developing. But, sooner or  
23 later, as with any 'for profit' business, bottom line must be  
24 given consideration. For TRIAD, the time is now. The  
25 reports and the recommendations for the General Election  
26 are ready, but they can only be provided to those who are  
27 willing to sign up as TRIAD clients. In my opinion, the

1 service is the most effective way to get efficient use of my  
2 political dollars. Not only does TRIAD know who to  
3 support, but also how much they need and the most  
4 effective way to deliver the help.

5 Undated Triad Inc. Memorandum from Robert Cone. JS000009 (emphasis added); Cone  
6 Dep. Tr. at 418-422. Notwithstanding the statements in this memorandum, during the  
7 remainder of 1996, Triad continued to send Fax Alerts and reports to numerous  
8 individuals and groups, and to provide individualized counseling on political  
9 contributions, without receiving any payment or commitment to make future payments.<sup>31</sup>

10 When asked about Triad client billing, Jason Oliver testified:

11 During 1996, the client billing was basically nonexistent.  
12 There was no set structure for billing clients except the  
13 issue education organizations which were some kind of  
14 percentage basis of what was expended by each of the  
15 education efforts.

16 There was a billing structure that was created in 1997 that  
17 was set up, and there was an attempt to go back to 1996 and  
18 issue statements to each of the TRIAD clients who put  
19 federal dollars into campaigns. And so the billing structure,  
20 while it was in place in 96, it was never formalized until 97.

21 Oliver Dep. Tr. at 96. Triad has stated that it sent invoices for 1995-1996 activity in July  
22 1997. *See* Triad Inc. Supplemental Response to Commission's Order to Answer Written  
23 Questions.<sup>32</sup> Despite these belated efforts, which happened to coincide with a Senate

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<sup>31</sup> For example, although they received a copy of this memorandum, John and Ruth Stauffer, who contributed \$42,500 to nine PACs through Triad, testified that they never had any discussions about paying Triad a fee, and never received a bill or invoice requesting any sort of payment.

<sup>32</sup> During the negotiation of stipulations, Triad produced a chart which purported to reflect the invoices it sent out in 1997. *See* Attachment A to April 30, 1999 submission. Despite a request from Commission staff, no backup materials (e.g. bank records, canceled checks, etc.) were provided for the chart. The chart reflects the fact that only a very few individuals (less than fifteen) made payments in response to the invoices, and some of those that did made payments that were considerably less than the amount invoiced. In fact the majority of the "payments"

1 Governmental Affairs Committee investigation, it does not appear that Triad ever  
2 collected any fees from a majority of the individuals who received its publications or for  
3 whom it forwarded political contributions in 1995-1996. Triad Stips. at ¶ 2.6(a)-(b).

4 In their depositions, both Ms. O'Rourke, the Triad Finance Director, and  
5 Mr. Rodriguez, the Triad Political Director, claimed to know absolutely nothing about, or  
6 to have had any responsibility for, any fee structure or for any client billing. O'Rourke  
7 Dep. Tr. at 59-63, Rodriguez Dep. Tr. at 56-57. Both Ms. O'Rourke and Mr. Rodriguez  
8 testified that such matters were handled by Ms. Malenick. *Id.*

9 **3. Triad's Coalition of PACs**

10 During 1995-1996, Triad contacted numerous conservative organizations,  
11 membership groups and individual activists to encourage them to form a "coalition" or  
12 "network" of political action committees ("PACs") that could work together for the  
13 purpose of supporting conservative Republican congressional candidates in the upcoming  
14 1996 elections. In a March 1996 letter sent to a number of individuals, Triad/CSM stated  
15 that "the TRIAD concept has expanded to include coordination with conservative  
16 political action committees and issue organizations that now seek our research analysis on  
17 a regular basis." TMS 000583. Further, Triad/CSM claimed to have "taken an advisory  
18 role among key conservative political action committees" and to have "built coalitions  
19 that will provide essential targeted assistance to candidate's [sic] campaigns in winnable  
20 districts." Triad/CSM Activities Report, January-September 1995, KI 00507.

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recorded on the chart are credits for funds previously sent to Triad during 1995-1996. In sum,  
the chart reinforces the conclusion that most of the individuals to whom Triad sent Fax Alerts,  
and for whom it forwarded contributions, never made any payments.

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1 In a Triad promotional video distributed in the Spring of 1996, Carolyn Malenick  
2 indicated that by working with PACs and other donors, Triad would be able to provide  
3 "rapid fire" support to conservative Republican candidates in tightly contested races. *See*  
4 Transcript of 1996 Triad Videotape. In its brochure, Triad stated that one of its activities  
5 was "[w]orking with conservative political action committees and issue organizations for  
6 efforts to maximize their separate funding sources to accomplish common objectives."  
7 *See* Triad Brochure, TR10 000402-403. Triad also told donors that it could provide them  
8 with a "[m]atrix of currently active, conservative, federally registered, like-minded  
9 political action committees who have been identified and agreed to consult on targeted  
10 candidates and campaigns." *See* TR10 000531.

11 Information obtained as part of the investigation indicates that, during 1995-1996,  
12 Triad representatives met on a regular monthly, and later bi-weekly, basis with a number  
13 of conservative organizations with PACs regarding their plans to support specific  
14 candidates. Triad also wrote to PACs seeking such information. For example, Carolyn  
15 Malenick sent one PAC an inquiry as to what candidates it would be "pre-disposed to  
16 playing if the \$\$ [sic] were there. This will help us with our clients." *See* 7/16/96 Fax  
17 Cover Sheet from Carolyn Malenick to Brent Bozell, Conservative Victory Committee.

18 Triad also informed certain conservative PACs that Triad would recommend that  
19 members of its donor network contribute to their PAC. During the Summer and Fall of  
20 1995, Triad asked these PACs to provide a one paragraph synopsis describing their  
21 philosophy and activities. Triad compiled these descriptions into a "Political Action

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1 Committees" memorandum ("PAC Memorandum") that it began distributing to potential  
2 donors. JS 000002-04.<sup>33</sup>

3 The Triad PAC Memorandum, which described thirteen PACs, stated that:

4 The following PACs agree with TRIAD's targeting  
5 approach for the 1996 elections. TRIAD provides advice  
6 and consulting services to its' [sic] participants on their  
7 political contributions. . . . While this is only a partial  
8 listing of the PACs involved in TRIAD, these PACs give  
9 direct contributions to candidates in addition to their other  
10 political involvements. The PACs listed will participate in  
11 contested primaries.  
12

13 As discussed below, two PACs (AFE and CAFE) actually received all of their  
14 funds through Triad, and made all of their federal political contributions to Triad-  
15 recommended candidates.

16 During this investigation, Triad stipulated that:

17 6.7 Triad/CSM and Triad Inc. *informed individuals to*  
18 *whom it made contribution recommendations that it had*  
19 *discussions and conversations with representatives from*  
20 *the PACs as to the candidates and type of candidates they*  
21 *had targeted for their support.* Triad also asked if the  
22 PACs' list of candidates for their support might be  
23 expanded should the PAC receive additional funds.

24 Triad Stips at 6.7 (emphasis added).

25 During 1995-1996, Triad received and forwarded 199 political contribution  
26 checks, totaling approximately \$298,500 to federal political action committees. Triad  
27 Stips at 6.11-6.12. Of these PAC contributions, 36 political contribution checks, totaling

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<sup>33</sup> Triad also maintained a database which kept track of the candidates to which each of the groups listed on its PAC Memorandum had contributed during the 1996 election cycle. See Triad Combined Candidate Status Report - Coalition Overview, KI 00572-590.

1 approximately \$56,050, were collected and forwarded after Triad Inc. was incorporated in  
2 May 1996. Triad Stips at ¶ 6.12.

3 Although Triad has consistently maintained that these PAC contributions, which  
4 were forwarded with a standard cover letter asserting that the funds could be used for any  
5 purpose, were not earmarked for any particular candidate or committee, public disclosure  
6 records indicate that the PACs which received such funds through Triad often made  
7 contributions to candidates featured in Triad Fax Alerts. See June 1997 Affidavit of  
8 Carolyn Malenick submitted in MUR 4633, Triad Stips at ¶ 6.8, and 1996 FEC  
9 Disclosure Reports of PACs listed on JS 000002-04.

10 Further, Ms. Malenick's assertion of the Fifth Amendment prevented the  
11 Commission from obtaining her testimony as to whether she was quoted correctly in a  
12 press report on an October 1997 question and answer session regarding allegations raised  
13 in a 1997 Senate Governmental Affairs Committee Investigation. According to the  
14 article, Ms. Malenick reportedly:

15 acknowledged that in a few cases, the candidates  
16 themselves steered their own donors to her organization.  
17 Malenick would then match these donors with political  
18 action committees (PACs) who were likely to support that  
19 same candidate, in effect allowing the donor to give more  
20 money to the candidate - albeit indirectly and with no  
21 coordination, she said - than the maximum they would  
22 otherwise be able to give.

23 "Triad's Stealth Campaigns Elect Lawmakers," The Hill, Oct. 8, 1997, at 43.

24 Even though forearmed with the knowledge as to which candidates the PACs had  
25 targeted for support, Triad, at times, made additional efforts to ensure that its coalition of  
26 PACs would deliver support for Triad-recommended candidates with the funds provided



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1 through Triad. For example, in June and July 1996, Triad forwarded \$42,500 in  
2 contributions from John and Ruth Stauffer, who are in-laws to Kansas Senate candidate  
3 Sam Brownback, to nine PACs. The investigation revealed that, at the same time that it  
4 was forwarding the Stauffers' checks, and thereafter, Triad contacted at least five of the  
5 nine PACs to ask if they would agree to contribute any newly received funds to Sam  
6 Brownback. In several instances, Triad made follow-up contacts with the PACs, after  
7 forwarding the Stauffer contributions, to again urge that the PACs contribute funds to  
8 Brownback. All nine of the PACs made subsequent contributions to the Brownback  
9 Committee. In the case of Citizens United Political Victory Fund and Free Congress  
10 PAC, the PACs actually transmitted their contributions to Brownback through Triad. A  
11 Free Congress PAC representative informed Commission staff that she had the  
12 impression that Carolyn Malenick actually was handling fundraising for the Brownback  
13 campaign. Similarly, in May 1996, Triad forwarded five \$1,000 contributions from  
14 Robert Riley, Jr. to five PACs that were part of the PAC coalition. Each of these PACs  
15 subsequently made contributions to Bob Riley for Congress, the principal campaign  
16 committee of Mr. Riley's father, who was a relative unknown running in a seven  
17 candidate primary for the Republican nomination for the Alabama Third Congressional  
18 District.

19 Triad and Ms. Malenick not only worked with pre-existing PACs, but also took  
20 steps to create, fund and manage the activities of two PACs, AFE and CAFE, which, as  
21 discussed below, it was affiliated with for purposes of the Act.

1                   a.     AFE

2             Information gathered during this investigation establishes that Triad and  
3     Ms. Malenick controlled the Sacramento, California-based American Free Enterprise  
4     PAC ("AFE"). AFE was formed in the summer of 1995, but its treasurer resigned later  
5     that year, before the PAC had received or made any contributions. At some point in late  
6     1995, Carlos Rodriguez, Triad's political director, recruited David Bauer, an accountant  
7     who acted as a professional treasurer for a number of political committees, to serve as  
8     AFE's new treasurer. David Bauer Deposition Transcript ("Bauer Dep. Tr.") at 12. At  
9     his deposition, Mr. Bauer testified that Mr. Rodriguez described AFE as Carolyn  
10    Malenick's PAC. *Id.* Further, Mr. Bauer testified that all of the contributions received by  
11    AFE came through Triad and that all AFE decisions about candidate contributions were  
12    made by Ms. Malenick, whom he regarded as the PAC Director. *Id.* at 16, 20, 27, 32-33,  
13    46-47, 85-87. Mr. Bauer also testified that he simply performed the ministerial or  
14    administrative function of depositing donor checks from Triad in AFE's account and  
15    writing AFE checks to the federal political campaigns selected by Ms. Malenick, and that  
16    he had no discretion in terms of selecting candidates to support. Bauer Dep. Tr. at 48, 55,  
17    85-87. Mr. Bauer said that the normal routine was for him to receive a Triad Fax Alert,  
18    and within a day or so to receive a phone call from either Ms. Malenick or her assistant,  
19    Triad Finance Director Meredith O'Rourke, instructing him to make a contribution to the  
20    candidate or candidates discussed in the Fax Alert. *Id.* at 38-39.

21           During 1995-1996, Triad sent AFE individual contribution checks (ranging in  
22    amount from \$10 to \$5,000) totaling \$42,660; and AFE made contributions (in amounts  
23    ranging from \$1,000 to \$5,000) to twenty-six (26) Triad-recommended candidates

1 totaling \$40,500. *See* 1995-1996 AFE Disclosure Reports. Robert Cone and his wife  
2 each contributed \$2,500 to AFE in December 1995.

3                   b.     CAFE

4             Triad and Ms. Malenick also played a role in the formation and operation of  
5 Citizens Allied for Free Enterprise PAC ("CAFE"). David Gilliard, who formerly was a  
6 partner in a consulting firm with Carlos Rodriguez and later acted as a vendor for Triad  
7 political advertising campaigns, testified that Carolyn Malenick contacted him with the  
8 request that he form a new PAC to help support Republican candidates. Gilliard Dep. Tr.  
9 at 17-22. Gilliard further testified that Ms. Malenick told him that Triad would do all of  
10 the fundraising for his PAC from its donor network, and that Triad also would provide his  
11 new PAC (CAFE) with research and recommendations as to the federal candidates that it  
12 deemed worthy of contributions. *Id.* Mr. Gilliard testified that all of the contributions  
13 received by CAFE came through Triad. *Id.* at 24. Mr. Gilliard testified that  
14 Ms. Malenick had told him that he was not bound by her recommendations and that he  
15 had autonomy in deciding which candidates CAFE would support.<sup>34</sup> *Id.* at 22-23.  
16 Notwithstanding Mr. Gilliard's claim of autonomy, all of the federal candidates to which  
17 CAFE contributed had been recommended by Triad.<sup>35</sup> *See* CAFE Subpoena Response

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<sup>34</sup> CAFE also made a small number of contributions to non-federal candidates in state and local races. *See* CAFE Disclosure Reports, Gilliard Dep. Tr. at 121-122, 140. Some of these CAFE contributions were made to candidates and committees that were clients of Mr. Gilliard's consulting firm. Gilliard Dep. Tr. at 15, 121-122.

<sup>35</sup> Notably, sixteen of the twenty-three candidates to which CAFE contributed during 1995-1996, including all of the contributions made in connection with contested primaries, also received contributions from AFE. Mr. Gilliard acknowledged helping Ms. Malenick coordinate the contribution activities of AFE and CAFE by sending a memo to Mr. Bauer with Ms. Malenick's instructions as to the candidates who were to receive AFE contributions. Gilliard Dep. Tr. at 75-77, Bauer Dep. Tr. at 35-36.

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1 and Gilliard Dep. Tr. at 26 (purported exceptions were endorsed by Triad). During 1995-  
2 1996, Triad sent CAFE individual contribution checks totaling \$38,575; and CAFE made  
3 contributions to 23 federal candidates totaling \$34,996. See 1995-1996 CAFE Disclosure  
4 Reports. Robert Cone and his wife each contributed \$2,500 to CAFÉ in December 1995.

5 **4. Triad's Political Audits**

6 During 1995-1996, Triad/CSM and Triad Inc. performed approximately two  
7 hundred and fifty (250) "political audits" on the campaigns of Republican candidates for  
8 federal office. The audits involved multiple contacts with the campaigns, and were  
9 conducted through telephone contacts, the exchange of written materials, and in the case  
10 of at least 50-60 campaigns, face-to-face meetings. Triad Stips. at ¶ 3.1 and 3.8. These  
11 political audits were overseen and conducted by Carlos Rodriguez, with assistance from  
12 Jason Oliver, Cleta Mitchell and William Saracino.<sup>36</sup> Triad Stips. at ¶ 3.1.

13 The political audits were a key component of Triad's efforts to elect and re-elect  
14 conservative candidates to maintain a Republican majority in Congress. Triad used the  
15 political audits to develop the information needed to select the candidates that it would  
16 target for support by its coalition of PACs, and for which it would expressly advocate  
17 financial support in solicitations that were communicated to potential donors in "Fax  
18 Alert" newsletters and other Triad publications. Triad Stips at ¶ 3.2. Further, Triad Inc.  
19 used the political audits as a vehicle for providing targeted campaigns with consulting  
20 advice on campaign strategy and fundraising. Later, Triad Inc. used the information

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<sup>36</sup> One specific component of Triad's political audit program was an effort to contact and assess the re-election campaigns of Republican congressmen first elected in 1994 ("Republican Freshmen"). During the summer of 1996, Triad compiled a list of thirty-three (33) Republican Freshmen to be audited prior to the 1996 election. Triad Stips. at ¶ 3.7, TR10-000045-50.

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1 gathered during the political audits in developing the candidate-specific advertising that  
2 CR and CREF sponsored during the last weeks before the 1996 congressional elections.  
3 Triad Stips. at ¶ 3.12.

4 Triad informed each of the audited campaigns that the information obtained  
5 during the political audit would be used by Triad in making recommendations to  
6 individuals regarding possible political or financial support for their campaigns. Triad  
7 Stips at ¶ 3.3. Some of the candidates whose campaigns were audited informed the  
8 Commission that they understood Triad to be an organization whose purpose was to raise  
9 funds for targeted Republican candidates. *See, e.g.*, 1999 letters from audited campaigns.  
10 During the audits, campaigns were asked for the names of their “maxed out” donors (who  
11 already had given that campaign the maximum legal amount) that Triad could contact to  
12 ascertain their interest in giving to other candidates. Rodriguez Dep. Tr. at 86-88.

13 As part of its political audits, Triad obtained detailed information regarding the  
14 candidate’s and the campaign’s prospects in the upcoming election. The topics that Triad  
15 discussed with each campaign staff typically included information regarding the  
16 campaign’s fundraising goals and performance, the campaign’s operating budget and  
17 staffing plans, the identity of the campaign’s professional consultants, the campaign’s  
18 advertising plans, recent public polling results, key issues being advanced by the  
19 candidate or his/her opponent, the campaign’s self-assessment of its specific needs, the  
20 strengths and weaknesses of the campaign, the strengths and weaknesses of the opponent,  
21 and the campaign’s prospects for victory. Triad Stips at ¶ 3.4.

22 In many cases, Triad representatives prepared written audit reports which were  
23 based on discussions with the candidates and/or campaign staff. Triad Stips at ¶ 3.8.

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1 Many of the audit reports indicate that Triad intended to have additional contacts with the  
2 campaign during the period between the date of the audit and the upcoming elections.  
3 Triad stipulated that the audit reports accurately reflected some portions of the  
4 discussions that Triad representatives had with representatives of the different 1996  
5 congressional campaigns. Triad Stips. at ¶ 3.8. As discussed below, a number of the  
6 audit reports reflect assistance being rendered to various campaigns by Triad.

7                   a.     Consulting Advice

8             Various audit reports, as well as subsequent Fax Alerts, indicate that Carlos  
9 Rodriguez provided professional consulting assistance to the campaigns both during and  
10 after his political audit visits. Mr. Rodriguez, who was being paid more than \$1,000 per  
11 day, plus expenses, by Triad, for his work on the political audits, testified that neither he  
12 nor Triad charged or billed any of the campaigns for his review of their operations during  
13 a political audit visit.<sup>37</sup> Further, Mr. Rodriguez testified that he did not volunteer his time  
14 to any campaign in 1996. Rodriguez Dep. Tr. at 21.

15             Although Mr. Rodriguez generally professed to have little or no recollection of his  
16 conversations during audit visits to specific campaigns, he testified that his audit reports  
17 were dictated immediately after his visits with the campaigns while the conversations  
18 were fresh in his mind. Rodriguez Dep. Tr. at 164-165 and 320. Mr. Rodriguez's  
19 contemporaneous observations and subsequent Fax Alerts based on these reports establish  
20 that Triad/CSM and Triad Inc. provided assistance to various campaigns.

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<sup>37</sup> Mr. Rodriguez explained the failure to bill the campaigns for his assistance by testifying that he did not regard the type of advice or opinions regarding political strategy that he provided to different campaigns as being the type of service for which he would seek payment. Rodriguez Dep. Tr. at 404-405.

1 i. Joe Pitts Campaign

2 In early April 1996, Mr. Rodriguez conducted an audit of the congressional  
3 campaign of Joe Pitts in the Pennsylvania Sixteenth District Republican primary. In an  
4 April 10, 1996 Fax Alert, Triad/CSM recommended that readers contribute to the Joe  
5 Pitts campaign.<sup>38</sup> Following Mr. Pitts' primary victory, Triad/CSM described its  
6 involvement in helping the campaign:

7 TRIAD Director, Carolyn Malenick and TRIAD's political  
8 counsel, Carlos Rodriguez spoke with Joe Pitts and  
9 campaign officials to identify the needs of the campaign –  
10 not just in terms of dollars, but how those dollars would be  
11 spent. The decision was made that a major phone bank  
12 effort was imperative – but no funds were on hand to  
13 implement the program. After discussion with TRIAD, a  
14 phone bank program was developed by the campaign and  
15 the cost determined. The information was provided to  
16 TRIAD clients ... and that's when TRIAD's Finance  
17 Director Meredith O'Rourke went to work.

18 The cost of the phone bank with additional radio to enhance  
19 the message was estimated by the campaign to be \$20,000 –  
20 and over the next 48 hours, TRIAD clients were contacted  
21 about helping Joe Pitts. Within 48 hours, a combination of  
22 TRIAD clients and PACs donated \$21,450 to the Pitts for  
23 Congress campaign. Triad made sure the funds donated by  
24 its' [sic] clients were used to pay for the phone bank  
25 program for the primary election.

26 See Undated Triad Fax Alert, entitled "TRIAD Comes Through in Pennsylvania  
27 Primary!!! With TRIAD's help, Joe Pitts Wins GOP Nomination by 19%" FA13. This  
28 Fax Alert also quoted Joe Pitts as stating that:

29 TRIAD saved the day for my campaign! TRIAD's clients  
30 came through and helped me when we needed help the

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<sup>38</sup> Joe Pitts, one of the first candidates featured in a Triad Fax Alert, was running for a seat in Congress from the district in which Robert Cone lived. Further, Robert Cone testified that he attempted to raise funds for Mr. Pitts' candidacy in 1996. Cone Dep. Tr. at. 323-329.

1 most. Our winning margin was stupendous. TRIAD  
2 played a major role for its' [sic] clients in identifying what  
3 our campaign needed, mobilizing the grassroots network  
4 and coming through with the funds to help pay for our  
5 phone bank program. Our victory is truly a TRIAD victory!  
6 Thank You TRIAD!!!!.

7 ii) Bob Riley Campaign

8 In May 1996, Triad/CSM audited the congressional campaign of Bob Riley in  
9 Alabama's 3<sup>rd</sup> Congressional District Republican primary. Following the audit, and the  
10 incorporation of Triad Inc., Mr. Rodriguez had regular telephone contacts with both the  
11 campaign manager, Billie Joe Johnson, and another campaign official, Robert Riley, Jr.  
12 See Affidavits of Johnson and Riley, Jr. in MUR 4633, Riley Dep. Tr. at 113-119.  
13 Although both Rodriguez and Riley, Jr. testified that they could not remember any of the  
14 specific issues or problems they discussed in connection with the campaign, both  
15 acknowledged that the Bob Riley for Congress campaign did not have an experienced  
16 political consultant on retainer who could have provided similar advice in 1996. *Id.* In  
17 an affidavit filed with the Commission, the campaign manager for Bob Riley for  
18 Congress stated his belief that Triad may have played a role in getting the NRA to  
19 endorse Mr. Riley's candidacy. After the campaign was over, Congressman Riley sent a  
20 thank you note to Triad which stated: "[Triad's] political expertise in formulating a  
21 winning strategy was instrumental [to our victory]."<sup>39</sup> See TR10 000087.

<sup>39</sup> Further, during the 1998 election cycle, the Bob Riley for Congress campaign hired Mr. Rodriguez as its general political consultant. See Rodriguez Dep. Tr. at 355-56.



iii. Vince Snowbarger Campaign

Triad/CSM and Triad Inc. also assisted the Vince Snowbarger campaign in Kansas' 3rd Congressional District. A June 21, 1996 audit report stated:

The Vince Snowbarger campaign presents us with an opportunity to elect a good conservative who would be loyal to the cause for years to come. *As a leader within the conservative movement*, it is incumbent upon Triad to ensure victory in the primary is possible.

TR15001206-07 (emphasis added), Rodriguez Dep. Tr. at 169-170. Mr. Rodriguez's audit report states that he attempted to address what he perceived as deficiencies in the campaign organization by giving the campaign "a plan to work out with regards to fundraising establishing specific financial goals and programs to achieve those objectives." *Id.* at 159-160. While Mr. Rodriguez only remembered giving verbal advice, the Snowbarger campaign reported receiving a document which set forth Mr. Rodriguez's plan (no copy of which was retained after the 1996 election). Further, Mr. Rodriguez's audit report states that Triad would identify "ten House members who can each give [Snowbarger] \$1,000 outside of our regular scope of leadership PACs" and that he intended to work with a consultant who had been hired by the Snowbarger campaign to "find out how much money we need to generate for [Snowbarger] from some of our clients and from some ideological PACs who may already be willing to help." *Id.* at 168-169. The Snowbarger campaign, which had a subsequent contact with Triad during a visit to Washington, DC, reported only receiving general advice from Rodriguez, and while it recalled his pledge to raise funds for the campaign from sitting congressmen, it claimed not to be aware of any funds that it received as a result of Mr. Rodriguez's efforts.

iv. Ed Merritt Campaign

Another example of Triad Inc. providing assistance to a campaign can be found in the following audit report discussion of the campaign of Ed Merritt in the Texas Congressional District, which detailed efforts to convince the campaign to use telephone banks in the upcoming general election.<sup>40</sup> Mr. Rodriguez stated:

During my visit today they had planned to only do a volunteer phone bank. I spent a considerable amount of time educating Ed Merritt and [campaign manager] Dennis Suiter on the essential need to seriously consider augmenting their budget to include a paid phone bank operation.

TR1500182-85, Rodriguez Dep. Tr. at 176.

Ed Merritt for Congress campaign manager Dennis Suiter described having several contacts with Triad, both before and after Mr. Rodriguez's September 5, 1996 visit. Mr. Suiter stated that the campaign understood that if "found worthy" of endorsement, Triad would "educate" donors as to Ed Merritt's candidacy, and that this would result in the campaign receiving contributions. In discussing the Triad political audit, Mr. Suiter reported being aware that Triad might sponsor public advertising about the different candidates in the race, but he did not recall any mention of CR or CREF.

v. Bob Schaffer Campaign

Mr. Rodriguez's audit report on the Bob Schaffer campaign in Colorado's Fourth Congressional District discusses how Triad Inc. could help that campaign in getting a

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<sup>40</sup> The audit report on the Merritt campaign also noted that Mr. Rodriguez had discussions with the campaign about Triad helping to arrange for conservative celebrities to come to the district as a headliner for a campaign event. TR15 000182-83, Rodriguez Dep. Tr. at 181-182. Although similar discussions are reflected in other audit reports, there is no evidence that Triad was ever successful in arranging for any conservative celebrities to appear at any candidate's campaign event.

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1 potential fundraiser to fulfill a commitment to the candidate to raise \$50,000. TR15  
2 001201-03. Rodriguez Dep. Tr. at 194-201. Although Mr. Rodriguez acknowledged that  
3 he may have met with the delinquent fundraiser, he could not recall the purpose of their  
4 meeting. Mr. Rodriguez's audit report also suggests that Triad "help generate the money  
5 for the cost of a survey so that we can find out where Schaeffer stands in relation to the  
6 other candidates before the eyes of the voters who are likely to vote in the Republican  
7 primary in August. That cost should be no more than \$6,000." *Id.*, Rodriguez Dep. Tr. at  
8 197-198. Once again, Mr. Rodriguez could not recall this action item, and there is no  
9 documentary evidence that Triad followed up on this task. Rodriguez Dep. Tr. at 197-  
10 198.

11 While Triad's advice benefited certain candidates, the record indicates that Triad  
12 did not receive any payments from any of the candidates or campaign committees that  
13 were the subject of a political audit during 1996. *See* Triad Stips. at ¶ 3.6.

14 **b. Opposition Research**

15 As part of some political audits, Triad would arrange for an outside research  
16 company called Trenton West to perform a "background check" for the purpose of vetting  
17 a congressional candidate prior to issuing a contribution recommendation. Jason Oliver  
18 Depo. Tr. at 78-80. This effort was designed to pre-empt any surprise disclosures that  
19 might later be uncovered by Democratic Party opposition research. *Id.* Triad would  
20 share the results of the background checks with the campaign whenever it uncovered  
21 information which raised questions about its candidate. Rodriguez Dep. Tr. at 229-232.

22 Typically, Triad would pay Trenton West between \$2,000 and \$3,500 per  
23 candidate for an "[a]nalysis of Electronic Background Records including civil and

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1 criminal files; Resume verification and additional Opposition Research activities as  
2 specified under a contract for the vetting of “friendly” candidates preparatory to decision-  
3 making.” See Trenton West invoices, e.g., CM 001797. During 1996, Triad paid Trenton  
4 West \$35,270 to perform this type of “Opposition Research” on different Republican  
5 candidates. See TR5 000009. While Mr. Rodriguez does not recall ever withholding a  
6 contribution recommendation because of an adverse finding from such background  
7 checks, he does recall having to get clarification from some candidates regarding their  
8 past activities. Rodriguez Dep. Tr. at pp. 229-232.

9 **5. Triad’s Advocacy and Fundraising for Selected Candidates**

10 a) **Triad Fax Alerts**

11 During 1996, Triad sent approximately 60 separate dated editions of a newsletter  
12 called the “Fax Alert”, or sometimes referred to as the “Daily Fax Alert,” to a list of  
13 approximately one hundred and sixty (160) persons and entities.<sup>41</sup> Triad Stips. at ¶ 4.1.  
14 While some editions of the Fax Alert newsletter focused on overall themes in the 1996  
15 federal congressional elections, a majority of the editions included research compiled on  
16 individual races, as well as contribution solicitations and other exhortations of support for  
17 specific candidates. Triad Stips. at ¶ 4.4.

18 (i) **Republican Primaries**

19 The first Triad/CSM Fax Alert which recommends support for a specific  
20 candidate is an April 10, 1996 Fax Alert regarding the Joe Pitts for Congress campaign.

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<sup>41</sup> The distribution list for forty-two editions of the “Fax Alert” newsletters that were sent through an outside facsimile service between August 2, 1996 and December 31, 1996 ranges from between 156 and 167 intended recipients. See FECTR 000138-297. The vast majority of these individuals never paid, or were even asked to pay, Triad any amount of money during 1995-1996.

1 See Triad Fax Alert, entitled "96 Primary Election Alert – April 10, 1996" FA14. After  
2 discussing polling results showing the purportedly liberal Karen Martynick ahead of  
3 purportedly conservative Joe Pitts, Triad states

4 the Pitts camp has begun its homestretch tactical  
5 adjustments to win on election day. In its armory, the Pitts'  
6 campaign will be using TV, radio, direct mail, phone banks  
7 and an aggressive grassroots Get Out The Vote effort as the  
8 campaign jets to the finish line. There is however a  
9 shortage of funds to fulfill this activity. Any resources  
10 from the TRIAD network will be used wisely by the  
11 campaign.

12 Action Item

13 Upon review of the attached Congressional District  
14 Analysis, I recommend you consider a contribution to  
15 this race. Immediately contact the TRIAD office so we  
16 know when to expect your check and the amount you will  
17 contribute. . . . The *Joe Pitts for Congress* campaign is  
18 anxiously awaiting word from you and other TRIAD  
19 clients.

20 Id. (emphasis in original).<sup>42</sup>

21 The second Triad/CSM Fax Alert which contains statements urging support for  
22 specific candidates was an April 22, 1996 Fax Alert regarding Indiana and North Carolina  
23 Primaries and the congressional campaigns of Marvin Scott, Robert Wilkie and Leroy  
24 Pittman. After giving an overview of these races, the Fax Alert states that "Three of these  
25 races are in need of an extra push both in financial support and participation by coalition  
26 workers." Id. at FA8-FA12.<sup>43</sup>

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<sup>42</sup> A subsequent Triad Fax Alert stated that \$21,450 was raised for the Pitts campaign by Triad during a 48 hour period. See Undated Fax Alert, FA 13.

<sup>43</sup> A subsequent Fax Alert, dated May 9, 1996, notes that "TRIAD clients and coalitions amassed over \$54,000 for these [three] primaries [Scott in IN 10, Wilkie in NC 07 and Pittman in NC 08]." FA7

1 The Congressional District Analysis for Indiana 10 attached to the April 22, 1996

2 Fax Alert states:

3 ***TRIAD Recommends Marvin Scott***

4 TRIAD recommends supporting Marvin Scott for the  
5 Republican nomination. Scott's support for a balanced  
6 budget and the fiscal reforms required to achieve this end  
7 are needed in Washington D.C. as we continue to push for  
8 conservative change. Indiana replaced 3 Democrat  
9 Congressmen with Freshmen Republicans in 1994. Had  
10 the resources been available, the state would have sent 2  
11 more, Marvin Scott in the Tenth and senator Jean  
12 Leising in the Ninth. Scott's rival for the GOP  
13 nomination is Blankenbaker, a pro abortion liberal. Her  
14 record in the State Senate is decidedly moderate on a slew  
15 of issues important to mainstream Republicans.

16 Indiana's Tenth District is the front-line in the battle  
17 for the soul of the Republican Party. Marvin Scott  
18 cannot wage the battle alone. He needs your  
19 involvement and financial support to carry the banner  
20 into November.

21 FA10 (bolding and underlining in the original).

22 The Congressional District Analysis for North Carolina 07 attached to the April

23 22, 1996 Fax Alert state :

24 ***TRIAD Recommends Robert Wilkie***

25 In the May 7<sup>th</sup> Republican primary, TRIAD is leaning  
26 towards conservative Robert Wilkie. Some candidates in  
27 the Republican field are social liberals who lack the  
28 conservative ideology embraced by Wilkie. Both social  
29 and fiscal PAC's/Coalitions support Wilkie because they  
30 know he will be a forceful advocate for the principles that  
31 swept the Republicans into office in 1994. The primary is  
32 the first battle in the contest to bring the Seventh  
33 District into the conservative column. Strong support  
34 for Wilkie is the best way to aid in this process.

35 It is likely that the victor of the Republican primary will  
36 become the next Congressman from the 7<sup>th</sup> District. As the  
37 first Republican to declare his candidacy on every major

1 media outlet in the district, Wilkie is on his way to victory.  
2 Money is the best way to ensure a Republican pickup in this  
3 district. . . . **With enough resources for Wilkie, North**  
4 **Carolina 7 is a seat in the Republican column.**

5 FA11 (bolding and underlining in the original).

6 The Congressional District Analysis for North Carolina 08 attached to the April  
7 22, 1996 Fax Alert states:

8 ***TRIAD Recommends Leroy Pittman***

9 **TRIAD recommends Leroy Pittman. Pittman holds an**  
10 **ideology that emphasizes personal values and States**  
11 **Rights over federal government intervention. Once in**  
12 **Congress, Pittman will be a strong advocate for reduced**  
13 **taxation and reform in education. The May 7<sup>th</sup> Primary**  
14 **is tightly contested between Morgan and Pittman. The**  
15 **Pittman team needs extra support to push them over the**  
16 **top and on the road to Congress.**

17 . . . A Pittman victory on May 7<sup>th</sup> will help to increase the  
18 chances of a Republican victory in November. The key in  
19 North Carolina's Eighth District is the effective application  
20 of grassroots assistance and financial support. **Your help**  
21 **is needed.**

22 FA12 (bolding and underlining in the original).

23 The third Triad/CSM Fax Alert which urges support for specific candidates was a  
24 May 22, 1996 Fax Alert regarding June 4th Primaries, which included recommendations  
25 to support the primary campaigns of John Thune (SD at large), Bob Riley (AL 03) and  
26 Mike Pappas (NJ 12). After giving an overview of the featured races, and referring to the  
27 attached detailed analyses, the Fax Alert states "Upon review of the attached  
28 Congressional District Analyses, I recommend you consider contributions to these races.  
29 Immediately contact the TRIAD office so we know when to expect your checks and the  
30 amounts you will contribute." *Id.* at FA1-FA6.

1 The Congressional District Analysis for South Dakota At Large attached to the  
2 May 22, 1996 Fax Alert states:

3 ***TRIAD Recommends John Thune***

4 **TRIAD recommends John Thune. From day one,**  
5 **Thune has run his campaign like a business. Thune**  
6 **also offers combination of social and fiscal conservatism**  
7 **and a broad depth of political experience.**

8 . . . When the General Election campaign begins, the  
9 nominees of both parties will face a race that can go in  
10 either direction. Neither party has a lock on this House  
11 seat, making the need to support a solid candidate like John  
12 Thune a necessity. **Thune's fiscally conservative message**  
13 **is being carried across the state - evidenced by his**  
14 **commanding fundraising lead and support within the**  
15 **states. Regardless, the seat can only be won with a**  
16 **major infusion of wisely used resources.**

17 FA4 (emphasis in the original).

18 The Congressional District Analysis for Alabama 03 attached to the May 22, 1996

19 Fax Alert states:

20 ***TRIAD Recommends Bob Riley***

21 In the June 4, 1996 Republican primary, TRIAD is leaning  
22 towards **pro business candidate Bob Riley. Riley offers**  
23 **conservatives a candidate they can wholeheartedly**  
24 **support. His pro life and pro gun credentials are**  
25 **unquestionable.**

26 . . . All the candidates on the Democrat side will be  
27 formidable, promising a competitive general election. **We**  
28 **must be certain that Bob Riley is the Republican**  
29 **nominee. A tight election increases the necessity of a**  
30 **thorough and organized campaign coupled with a strong**  
31 **grassroots effort.**

32 FA5 (underlined bold emphasis in the original; bold emphasis added).

33 The Congressional District Analysis for New Jersey 12 attached to the May 22,

34 1996 Fax Alert states:

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**TRIAD Recommends Mike Pappas**

**TRIAD recommends Mike Pappas. As a county Freeholder, Pappas has been a strong leader in reducing the tax burden of his constituents, achieving cuts 9 of the last 12 years.**

**The winner will be determined in the primary, increasing the importance of getting involved now to ensure the election of a solid social and fiscal conservative candidate like Pappas. New Jersey's 12<sup>th</sup> District is yet another battleground for the soul of the Republican Revolution. We must act now to defeat the left by supporting Pappas with all the resources we can muster !**

FA6 (emphasis in the original).

In July 1996, after its incorporation, Triad Inc. distributed a "Senate Analysis" of the Brownback-Frahm Kansas Senate Primary. Triad's analysis of this race states:

**The campaign to replace Dole is our best opportunity to send a message to the liberals who would weaken the principles upon which the Republican Party is based. The election of Brownback will send shockwaves throughout the Republican National Convention scheduled one week later. Sheila Frahm must be defeated !**

**. . . Victory is within reach for the movement ! We can defeat liberal Shelia Frahm, but only with a unified approach in support of Sam Brownback.**

See July 10, 1996 Triad Senate Analysis of "Kansas B" primary (emphasis added).

A July 18, 1996 edition of Triad's Fax Alert newsletter featured the Brownback-Frahm race, and also discussed two other congressional primaries in Kansas and one in Tennessee. The Fax Alert reprinted the first paragraph of the Brownback-Frahm analysis

1 quoted above, which closes with the exhortation that "Sheila Frahm must be defeated."<sup>44</sup>

2 The July 18, 1996 Fax Alert also contained the following:

3 TN-01: Jim Holcomb for U.S. Congress

4 In an eleven-way primary race, Tennessee State Senator Jim  
5 Holcomb is by far the best candidate for Congress . . .

6 Holcomb has been more than just a voice for the cause, he  
7 has been an active leader! **To ensure that Holcomb**  
8 **emerges the victor**, a forceful and efficient effort must be  
9 organized to mobilize the grassroots and utilize all the  
10 resources available. (emphasis added)

11 . . .

12 Kansas-02: Jim Ryan [sic] for Congress

13 The second district became an open Republican seat when  
14 Representative Sam Brownback declared for the open Dole  
15 seat. Prior to Brownback, the second district was  
16 represented by a Democrat. The strongest candidate in the  
17 primary and the one who is capable of keeping this seat in  
18 the Republican column is Olympic star Jim Ryun. The  
19 Democrat candidate is a wealthy individual who promises  
20 to use personal money to make the race competitive. **We**  
21 **cannot afford to lose this seat.** (emphasis added)

22 Kansas-03: Vince Snowbarger for Congress

23 This primary provides a clear contrast, liberal Eilert versus  
24 conservative Snowbarger. While Eilert is expected to raise  
25 and spend more money, Snowbarger's campaign is well  
26 staffed and extremely capable of efficiently using whatever  
27 resources can be put at their disposal.

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<sup>44</sup> After Brownback won his August 6<sup>th</sup> primary, a Triad Fax Alert quoted Brownback as stating:

I cannot even begin to thank TRIAD enough for its help in my Senate campaign. TRIAD played an essential role in my effort to educate voters about my conservative message and ideas for restoring the American dream."

Triad Fax Alert titled "96 Primary Election Results - August 7, 1996."

1                   **ACTION ITEM:**

2                   Upon review of the attached Congressional District  
3                   Analyses [Brownback, Ryun, Snowbarger and Holcomb],  
4                   **I recommend you consider contributions to these races.**  
5                   **Immediately** contact the TRIAD office so we know when  
6                   to expect your checks and the amounts you will contribute.  
7                   Because each race has unique dynamics, please contact  
8                   TRIAD before determining which races to support. We  
9                   want you to allocate your resources wisely. These  
10                  campaigns are anxiously awaiting word from you and other  
11                  TRIAD clients. (emphasis in original)

12                  *Id.*

13                  In its August 2, 1996 Fax Alert, Triad included its recommendation of Bob  
14                  Schaffer's candidacy in Colorado's Fourth Congressional District, which stated:

15                                   **TRIAD Recommends Bob Schaffer**

16                               As a solid conservative, Bob Schaffer will provide support  
17                               on social and fiscal matters important to us ! His strong  
18                               commitment to the principles of the Republican Revolution  
19                               will be welcomed in Congress. **With your support,**  
20                               **Schaeffer will win**, adding another voice for reform in  
21                               Washington. (emphasis added).

22                  TR10 000216-217.

23                  In its September 10, 1996 Fax Alert, Triad included its recommendation of  
24                  support for Woody Jenkins' candidacy in Louisiana's U.S. Senate "open primary":

25                               TRIAD's due diligence and value added intelligence has  
26                               revealed that Jenkins is both the best candidate  
27                               ideologically and the candidate who is most likely to defeat  
28                               liberal Mary Landrieu in November. . . .

29                               . . . For Jenkins to get into the run-off, he will need a last  
30                               minute influx of dollars to mount an aggressive media  
31                               campaign.

32                                   **ACTION ITEM**

33                   Upon review of this Louisiana Senate update, we  
34                   recommend you consider a contribution to this race.

1 Louisiana cannot afford two Democrats in the run-off  
2 November 5<sup>th</sup>. Immediately contact the TRIAD office so  
3 we know when to expect your check and the amount you  
4 will contribute. The Jenkins for Senate campaign is  
5 anxiously awaiting word from you and other TRIAD  
6 clients.

7 TR10 000203-204.

8 The August 7, 1996 Fax Alert states that "TRIAD will now shift focus on  
9 recommending liberal Democrats that can be defeated in the General Election. We have  
10 narrowed our focus to the 45 most winnable House Senate [sic] seats as well as a handful  
11 of Senate races." TR10 000215.

12 (ii) General Election

13 Numerous editions of the Triad Inc. Fax Alert newsletter sent out during the Fall  
14 of 1996 solicit support for various Republican House Freshmen congressmen who Triad  
15 identified as being engaged in close re-election campaign fights or races. Triad Stips. at ¶  
16 4.5. Some examples are set forth below.

17 The October 8, 1996 Triad Fax Alert newsletter lists the names of thirteen  
18 Republican Freshmen congressmen, who, based on Triad's research, "are engaged in close  
19 campaigns and in need of help from TRIAD clients." TR10 000170.

20 Triad's October 14, 1996 Fax Alert included an attached memorandum "Re: Top  
21 Tier Race in Need of Cash \$\$" which states: "[T]he election is only days away and these  
22 campaigns are in dire need of money!! Thank you." The memorandum lists campaigns  
23 by state, which, based on Triad's research, had not met their fundraising goals, and are  
24 categorized as: "Open & Challenger" (fifteen named candidates), "Senate" (four named

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1 candidates), and "Freshmen" (seven named candidates).<sup>45</sup> The memorandum instructs the  
2 readers to "Make all checks payable to the [campaign] committee listed below" and to  
3 "forward all checks to the TRIAD office as soon as possible". TR10 000146-47.

4 The October 17, 1996 Fax Alert newsletter includes a two page "Triad Freshmen  
5 Overview" listing thirty-three specific Republican Freshmen, and makes the following  
6 plea to readers:

7 Do not sit back and hope for the best, take the initiative,  
8 help protect these valiant Freshmen who have brought  
9 something to Congress it has lacked for quite some time -  
10 integrity. Do not let these honest men and women fall prey  
11 to the dishonest attacks of the liberal Washington elitists.  
12 Join the fight for economic and personal liberation; the  
13 Freshmen need your help today.

14 See TR10 000133-36, at 134 (emphasis in original).

15 Numerous editions of the Triad Inc. Fax Alert newsletter also urged readers to  
16 support specific Republican challengers for open congressional seats. Triad Stips at ¶  
17 4.7. Some examples are set forth below.

18 The October 18, 1996 edition of the Fax Alert newsletter states:

19 KS 03 Open Republican - Rep. Jan Meyers (retiring)

20 Former Kansas State House Majority Leader Vince Snowbarger is  
21 currently in fairly good position in his race to defeat liberal Democrat  
22 Judy Hancock. [polling data omitted]

23 **Each of these races is vital in the Republican bid to hold on and**  
24 **expand the majority in the United States Senate and House of**  
25 **Representatives. TRIAD client support on behalf of each of**  
26 **these races will help the Republicans continue leading America**

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<sup>45</sup> The 1996 candidates named in this solicitation included: Warren Dupwe, Linda Wilde, Vince Snowbarger, Rick Hill, Sue Wittig, Bill Witt, Steve Gil, Brent Perry, Brian Babin, Ed Harrison, Larry Bigham, Mike Pappas, John Shimkus, Bob Kilbanks, John Thune, Woody Jenkins, Ray Clatworthy, Tim Hutchinson, Al Salvi, J.D. Hayworth, Andrea Streasand, Todd Tiahart, Fred Heineman, Phil English, Steve Stockman and Randy Tate. TR10 000146-47.

1 down the “yellow brick road” of opportunity and advancement.  
2 (bold in original).

3 TR10 000132.

4 The October 23, 1996 edition of the Fax Alert newsletter states:

5 California Open Republican - Rep. Carlos Moorhead [retiring]

6 Republican Assemblyman Jim Rogan is battling Democrat  
7 millionaire and perennial candidate Doug Kahn. The race is a tight  
8 battle for Republicans and Democrats. . . . Kahn has also spent  
9 \$700,000 to Rogan’s \$300,000 (much of Kahn’s is personal money).  
10 Rogan will not be able to match Kahn’s spending, *and will need help*  
11 *to send Kahn packing for the third straight election.* (emphasis  
12 added). . . .

13 The election of 1996 does not end until November 5<sup>th</sup> when the  
14 polls close. The ability for you to make a difference with your  
15 1996 election dollars expires on Friday when the last of the  
16 media time must be purchased. Do not delay, unless you do not  
17 mind seeing Ron Dellums or Teddy Kennedy controlling the  
18 policy making committees of the United States Congress.  
19 (bolding in original).

20 TR10 000125.

21 b) Expanding the Majority

22 In late September and early October 1996, Triad Inc. compiled information  
23 gathered during its political audits and final candidate recommendations for the general  
24 election into a one hundred and sixteen (116) page book entitled *Expanding the Majority*.  
25 The first page of the book, which was on the letterhead of the “Privatized Republican  
26 National Coalition,” was titled “Triad’s 1996 General Election Top-Tier Analysis.” Triad  
27 Stips. at ¶ 4.12, FECTR 000298-413. Triad sent the *Expanding the Majority* book to over  
28 200 prospective donors. Oliver Dep. Tr. at p. 104-106.

29 The *Expanding the Majority* book provided detailed information and research  
30 about twenty-six (26) named Republican candidates for the House of Representatives and

seven (7) named Republican candidates for the U.S. Senate, as well as information pertaining to the demographics of their districts or states. Triad selected these candidates from all the districts or states researched as “top-tier” priorities.<sup>46</sup> At the beginning of each section, the *Expanding the Majority* book reiterates Triad’s goal of retaining a Republican majority in the next Congress. See FECTR 0003000 (“GOAL: Increase by 30 the Republican House Majority”) and FECTR 000381 (“GOAL: Increase Senate Republicans to a Filibuster-proof 60”).

Each of the biographies and district analyses contain a picture of the candidate and language which urges readers to support the recommended candidate. For example, the *Expanding the Majority* book makes the following types of statements:

- “Alabama’s voters deserve better than the same old politicians - they deserve Bob Riley.” FECTR 0000303
- “The future of the conservative movement includes Aderholt. . . . Aderholt will bring his vision and energy to Congress as an effective voice for the movement.” FECTR 000306
- “As a member of Congress, Rogan will continue to be a strong advocate for victims of crime. He is a strong social and fiscal conservative committed to restoring respect for the Constitution and society. California and America need James Rogan!” FECTR 000312.
- “Wilde’s integrity, eloquence and commitment to her beliefs will serve her constituents well in the 105<sup>th</sup> Congress. A victory for Wilde is essential.” FECTR 000315.

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<sup>46</sup> The *Expanding the Majority* book also includes a less detailed list of “2nd Tier” races which lists an additional twenty-one (21) named Republican candidates for the House of Representatives and an additional seventeen (17) named Republican candidates for the U.S. Senate. Triad provided this 2<sup>nd</sup> Tier information in order to illustrate that additional research had been done on other races for which Triad had not prepared a full written congressional district or state analysis. Triad Stips. at ¶ 4.14.

- 1 • “[Shimkus] is a fiscal and social conservative who will  
2 represent the 20<sup>th</sup> District with distinction in the 105<sup>th</sup>  
3 Congress.” FECTR 000321.
- 4 • “While a member of Congress, Young will be an integral  
5 part of the continuing revolution in government.” FECTR  
6 000336 . . . “To successfully defeat liberal Representative  
7 John Baldacci, conservatives must maximize their  
8 resources and provide as much financial support as  
9 possible.” FECTR 0000338.
- 10 • “Should he be elected to the 105<sup>th</sup> Congress, Cramer’s skill  
11 and association with members of the Republican leadership  
12 will make him a strong voice for reduced government and  
13 lower taxes from day one.” FECTR 000345 . . . “With a  
14 strong grassroots effort, and effective use of resources,  
15 Kevin Cramer will be elected to Congress in November!”  
16 FECTR 000347.
- 17 • “Oregon needs [Witt’s] voice in Congress.” FECTR  
18 000351. . . . “If Witt can make the race financially  
19 competitive and get a strong grassroots mobilization, he has  
20 a shot of taking Furse out. The left is worried, as their  
21 special interests have begun to focus on this race. They  
22 must be met and their likely attacks neutralized if Witt is to  
23 win.” FECTR000353.
- 24 • “Leinbach’s commitment is a trait the people of  
25 Pennsylvania’s 6<sup>th</sup> Congressional District will appreciate in  
26 the United States Congress.” FECTR 000354. . . . “This  
27 race can be won, but a lot of factors must fall into place for  
28 victory to become a reality on November 5<sup>th</sup>, money being  
29 the key.” FECTR 000356.
- 30 • “Once in the 105<sup>th</sup> Congress, Bob Kilbanks will make the  
31 people of his Lehigh Valley proud of their native son. He  
32 will bring Pennsylvania values to Washington as a forceful  
33 and articulate legislator.” FECTR 000357. “This is a  
34 Republican District, that with the right campaign should be  
35 a Republican win in November. . . . If they can pull the  
36 money together and unify coalition and leadership support,  
37 they can overcome McHale and send him to an early  
38 retirement.” FECTR 000359.
- 39 • “Gill is on the right path for victory. . . . With a forceful  
40 mobilization of grassroots and a continued strong push for



1 campaign dollars, the Gill campaign will remain in a  
2 position to defeat Gordon." FECTR 000365.

3 • "Once in Congress, Sessions will be an advocate for  
4 balancing the federal budget, reducing taxes, and fighting  
5 for the Constitutional rights we all hold dear." FECTR  
6 000372. . . . The opportunity to take Texas' Fifth  
7 Congressional District out of the Democrat column and put  
8 it into the Republican column is now! Pete Sessions is the  
9 Republican nominee and can take this seat with an effective  
10 coalition behind him and the continued mustering of the  
11 resources to win!" FECTR 000374.

12 • "We need Jay Mathis in Congress as a defender of the Bill  
13 of Rights." FECTR 000375

14 The introduction to *Expanding the Majority* reminds readers that: "only a few  
15 weeks remain until the General Election. The time for action is now! Please examine this  
16 packet and take the time to plan one of your most important INVESTMENTS in 1996!"  
17 FECTR 000299, Triad Stips. at ¶ 4.15. Mr. Rodriguez testified that the *Expanding the*  
18 *Majority* book was intended to encourage prospective donors to help, support or make  
19 contributions to the recommended candidates. Rodriguez Dep. Tr. at 248, 261-262.

20 c. Contributions Forwarded to Candidates

21 During 1996, Triad gathered and forwarded approximately 230 political  
22 contribution checks made out to federal candidates and/or campaign committees, totaling  
23 \$185,500. Triad Stips. at ¶ 5.3-5.4. This total includes approximately 180 political  
24 contribution checks, totaling approximately \$142,500 to federal candidates and their  
25 campaign committees, that Triad gathered and forwarded after its incorporation in May  
26 1996. Triad Stips at ¶ 5.4.

1                   **6.     The CREF and CR Public Advertising Campaigns**

2             In mid-1996, Triad Inc., which had declared that its goal for 1996 was to support  
3     the election or re-election of conservative Republican congressional candidates, began to  
4     direct the public advertising campaigns sponsored through CR and CREF. As discussed  
5     below, CREF and CR ultimately raised and expended \$3.2 million (\$1.8 million by CREF  
6     and \$1.4 million by CR) in election-related political advertising programs, all of which  
7     featured clearly identified candidates for federal office. See CREF Stips. at ¶ 4.1 and CR  
8     Stips. at ¶ 4.1.

9             CREF and CR only ran ads in congressional districts where Triad had audited and  
10    recommended support for the Republican candidates. In many instances, there was a  
11    striking similarity between the issues and themes that Triad discussed with a campaign  
12    during a political audit and the issues and themes that were featured in the later Triad-  
13    managed CREF or CR advertisements. Further, a Triad representative contacted the  
14    Republican campaigns in the districts where CR and CREF advertisements were being  
15    planned to ask the campaign to identify the topics they would like to see featured in any  
16    issue education ads that might be sponsored by outside groups. Although they did not  
17    contain express advocacy, the CREF and CR advertising campaigns were in many  
18    respects indistinguishable from advertising that might have been run by the featured  
19    Republican candidates or campaigns.

20                   **a.     Funding the Advertising Campaigns**

21             During 1996, Triad Inc. solicited contributions to fund the CREF and CR  
22    advertising efforts in a variety of mailings, including various editions of its Fax Alert  
23    newsletter, discussed *infra*. These solicitations stated that CREF and CR advertisements,

1 would respond to political advertisements sponsored by other groups (such as the AFL-  
2 CIO), without expressly advocating the election or defeat of particular candidates. *See*  
3 9/24/96 Triad Fax Alert, TR10 000194, 10/7/96 Triad Fax Alert, TR10 000174. The  
4 solicitations also indicated that there were no limits on the amount that could be  
5 contributed to CREF and CR, and that corporate contributions were welcome. *Id.*

6 Triad Inc.'s solicitations for CREF and CR, which were made in the same  
7 publications that commented on specific congressional races, indicated that the ads would  
8 help Republican candidates in close races. For example a 9/27/96 Fax Alert states:

9 Essentially the left has wasted their resources over the last  
10 year by "buying Christmas Cards in July." There are  
11 numerous Social Welfare Organizations with a wide range  
12 of issues, prepared to act as harbingers of the truth if you  
13 are ready to begin the "fall harvest." Already the ads have  
14 been developed and aired in 4 regional markets nationwide.  
15 The impact of these strategically placed ads by *Citizens for*  
16 *the Republic* prove that it is unnecessary to match the left's  
17 resources when the greatest weapons are proper planning  
18 and the truth. People do not start focusing attention on the  
19 General Elections until the political season begins  
20 following Labor Day which has come and gone. Please  
21 join TRIAD's Network: this one step could make the  
22 difference between victory and defeat !

23 TR10 000191. Similarly, a 10/21/96 Triad Fax Alert stated.

24 The approach recommended by TRIAD and the coalitions  
25 hoping to protect the Freshmen and win the Open and  
26 Challenger races, has been to back-load resources, which  
27 will not take effect until the last 10 days. All along,  
28 Republicans have known that the unions could not be  
29 matched dollar for dollar. **By holding resources until the**  
30 **final weeks, Republicans should be able to blanket the**  
31 **airwaves with the TRUTH. Friday October 25<sup>th</sup> is the**  
32 **drop dead date for air time to be purchased. The**  
33 **numerous 501(c)4 vehicles have messages developed and**  
34 **are ready to go up on the air – your help is needed now!**

35 TR10 000128-29.

i. CREF

During 1996, CREF had financial receipts totaling \$2,248,313, including \$970,000 from the Economic Education Trust and \$500,000 from Robert Cone. CREF Stips at ¶ 3.5. Including a number of cash transfers from Triad and CR, which were later characterized as undocumented loans, CREF received funds in amounts greater than \$5,000 from the following individuals and groups:

<u>Date</u>	<u>Source of Funds</u>	<u>Amount</u>
7/10/96	Robert Cone	\$300,000
8/2/96	Triad Inc.	\$ 50,000
9/6/96	Triad Inc.	\$ 5,500
9/20/96	Triad Inc.	\$ 10,000
10/8/96	Robert Cummins	\$100,000
10/15/96	Fred Sacher	\$ 50,000
10/15/96	KCI Inc.	\$ 50,000
10/15/96	Economic Education Trust	\$545,000
10/16/96	Fire Check, Inc.	\$ 10,000
10/17/96	Robert Cone	\$200,000
10/17/96	Edward Cone	\$300,000
10/18/96	Economic Education Trust	\$345,000
10/22/96	Economic Education Trust	\$ 80,000
11/7/96	Citizens for Reform	\$155,000
11/25/96	Triad Inc.	\$ 36,746

CREF Stips at ¶ 3.12.

1 ii. CR

2 During October and November 1996, CR had financial receipts totaling  
3 \$1,587,431.50, including \$858,000 from the Economic Education Trust and \$400,000  
4 from Robert Cone. CR Stips at ¶ 2.1. CR received funds in amounts greater than \$5,000  
5 from the following individuals and groups:

<u>Date</u>	<u>Source of Funds</u>	<u>Amount</u>
10/4/96	Fred Sacher	\$ 50,000
10/13/96	Cracker Barrel Old Country Store	\$ 10,000
10/16/96	Edward Cone	\$100,000
10/16/96	Dan Gerawan	\$ 50,000
10/17/96	Robert Cone	\$300,000
10/22/96	Economic Education Trust	\$355,000
10/23/96	Economic Education Trust	\$503,000
10/24/96	Robert Cone	\$100,000
10/29/96	Bruce Benson	\$ 25,000
11/04/96	Foster Freiss	\$ 25,000
11/04/96	Peter and Patricia Cloeren	\$ 20,000

18 CR Stips at ¶ 2.1-2.12.

19 b) CREF Summer Union Media Campaign

20 During the summer of 1996, CREF disbursed \$386,583.41 to produce and  
21 broadcast a series of television advertisements, related polling, and a toll-free telephone  
22 response line that it referred to as the "Union Media Campaign." CREF Stips. at ¶ 5.1.<sup>47</sup>

<sup>47</sup> Although Triad/CSM solicited at least twenty potential donors for contributions to this CREF effort (See FECTR 000424-30), the advertisements were financed entirely by Robert Cone, who contributed \$300,000 to CREF through an earmarked deposit with Triad Inc., as well as by transfers of funds that Mr. Cone had previously sent to Triad/CSM. Triad Stips. at ¶ 7.3(e) and CREF Stips. at ¶ 3.12.

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1 These summer advertisements, which were distinct from later CREF and CR  
2 advertisements, were broadcast, and related polling was conducted, in congressional  
3 districts where the AFL-CIO had previously broadcast advertisements that criticized the  
4 incumbent Republican congressmen in those districts.<sup>48</sup> See CREF Stips. at ¶ 5.1-5.8 and  
5 FECTR 00025-30. The Union Media Campaign ads each referenced the earlier union  
6 attacks on the Republican incumbent, and included some statements which generally  
7 attacked the AFL-CIO advertising and/or praised the incumbent congressmen. CREF  
8 Stips. at ¶ 5.1-5.8.

9 c) The Pre-Election Advertising Campaigns

10 CR spent \$1,412,313.55 and CREF spent \$1,331,471.08 to pay for the planning,  
11 production, broadcast or dissemination of television, radio, direct mail and telephone  
12 bank advertising programs that were distributed between late September and early  
13 November 1996. CR Stips. at ¶ 4.1 and CREF Stips. at ¶ 6.1.

14 Although the advertisements did not contain express advocacy, each  
15 advertisement did clearly identify one or more candidates for the U.S. House of  
16 Representatives or the U.S. Senate in the upcoming federal elections, and were only  
17 distributed in media markets that included parts of the clearly identified candidate's  
18 congressional district or state. CR Stips. at ¶ 4.2 and CREF Stips. at ¶ 4.7 and 6.1-6.14.  
19 In total, CR and CREF ran pre-election ads that commented on one or more candidates in  
20 thirty (30) House and Senate races (19 for CR, 13 for CREF, with two races in which

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<sup>48</sup> Although CREF disbursed funds to produce advertisements for six congressional districts as part of its summer Union Media Campaign, advertisements were only broadcast in four of the districts.

1 both groups produced advertising) during October and November 1996. CR Stips at ¶  
2 5.1-18.7, CREF Stips. at ¶ 6.1-6.14.

3 The evidence indicates that Triad selected the media markets for the CREF and  
4 CR ads based on the candidates in the upcoming congressional elections. In his interview  
5 with Commission staff, Mr. Nofziger, who served as CREF's nominal Chairman,  
6 acknowledged that his group's advertisements were designed either to portray the  
7 Republican candidate in a favorable light, or to portray the Democrat in that district in an  
8 unfavorable light. CR President Peter Flaherty testified that the media markets for CR's  
9 advertisements were selected on the basis of the public officials and other persons (all of  
10 whom were candidates) featured in the ads. Flaherty Dep. Tr. at 251.

11 Mr. Rodriguez's assistant, Jason Oliver, testified, however, that Triad selected the  
12 congressional districts based on the results of its political audits. Oliver Depo Tr. at 40.  
13 Mr. Oliver stated that Triad would look for a race where there was a clear contrast  
14 between the candidates, and where the "seats were considered top-targeted for the  
15 purpose of a takeover" or part of Triad's top tier as a result of a political audit.<sup>49</sup> *Id* at 40-  
16 41 and 104. Mr. Rodriguez testified that while he generally could not remember how the  
17 specific media markets for CR and CREF advertising were selected, he thought that  
18 media markets were often chosen so as to respond to AFL-CIO advertising in states or

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<sup>49</sup> In its response to written questions from the Commission, Triad Inc. stated that it selected media markets (which it referred to by congressional district designations) for the CR and CREF ads based on "a clear dichotomy between those individuals [congressional candidates] supporting traditional family values, conservative economic and social policies, and those [congressional candidates] arguing for the general expansion of governmental authority, increased taxes and positions contrary to traditional values. Those media markets where such advertisements would likely be overwhelmingly rejected by viewers as unpersuasive or wrong were not picked. Markets were chosen where the debate would be timely and significant, where the debate was 'hot'." See Triad Supplemental Response, dated September 3, 1999.

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1 districts that were “in play” with regard to the upcoming elections. Rodriguez Dep. Tr. at  
2 289-293. In early October 1996, Triad sent potential donors to CR and CREF advertising  
3 campaigns a list of “targeted races” along with the projected budgets and issues for  
4 “Potential 501(c)(4)” education ads. *See* Oct. 2, 1996 Triad Facsimile to Fred Sacher,  
5 TMS001078-90.

6 d) Contacts with Campaigns Featured in Advertising

7 Topics and issues that Triad discussed with a particular campaign during a  
8 political audit, as memorialized in a written audit report, frequently appeared in  
9 subsequent CR or CREF advertising in media markets within that congressional district.<sup>50</sup>  
10 *See* Triad Stips. at 3.12. In addition, Jason Oliver testified that, in the late summer or  
11 early fall of 1996, Ms. Malenick and Mr. Rodriguez instructed him to contact the  
12 Republican candidates’ campaigns in the congressional districts Triad was considering  
13 for “education ads” to find out what issue the campaigns would like to see addressed.  
14 Oliver Dep. Tr. at 116-117. Mr. Oliver testified that he called the Republican  
15 congressional campaign in each of the districts for races in the House of Representatives  
16 where advertising was being considered, which he previously had contacted in connection  
17 with the political audits, to pose the question “[i]f an organization were going to do issue  
18 education in your district, what would the top three or four issues be that you think need

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<sup>50</sup> In various submissions, Triad Inc. has stated that the vendors hired to produce the advertisements for specific media markets (congressional districts) developed proposed scripts based on their own research into topics that would be relevant to public debate, and that Triad did not specify topics for any particular ad. While the subpoena responses from one of the vendors (Dresner Wickers & Associates/Richard Dresner) stated that Triad only provided general guidance with regard to topics prior to drafting scripts, the subpoena responses and deposition testimony from other vendors (including Stevens, Reed and Curcio; Gannon McCarthy; and Gilliard & Associates) indicated that Triad Inc. identified, discussed, or provided research materials regarding the issues to be addressed in the CR and CREF advertisements.



1 to be brought up.” *Id.* at 116, 122-129.<sup>51</sup> Mr. Oliver testified that he did not mention  
2 either CR or CREF in any of these telephone inquiries, and when asked, told the  
3 campaigns that he did not know what groups might be running ads. *Id.* at 119.

4 Mr. Oliver prepared a chart of the issues suggested by the campaigns that he  
5 provided to Ms. Malenick and Mr. Rodriguez. *Id.* at 120-121 and 124-125. Although the  
6 original chart prepared by Mr. Oliver was not produced, Mr. Oliver identified a document  
7 with a 10/20/96 Rodriguez & Company facsimile header, that was produced by one of the  
8 advertising vendors for the CR and CREF campaigns, as containing a portion of the chart  
9 on which he recorded the different campaigns’ advertising preferences. M 0260-64. This  
10 chart, which includes some districts in which CR and CREF ultimately did not run ads,  
11 shows that in substantially more than 50% of the districts where CR and CREF ads were  
12 sponsored, the topics used in the ads were identical to those suggested by the campaigns  
13 in their conversations with Mr. Oliver. The advertising campaigns where the entry on  
14 Mr. Oliver’s chart matches the subsequent topic of the CR or CREF campaign include:

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<sup>51</sup> Mr. Oliver testified that he contacted each campaign involved in races for seats in the House of Representatives, but was not certain as to the source of information on Senate campaigns listed in the chart. Oliver Dep. Tr. at 128. Notwithstanding this caveat, Mr. Oliver also testified that he personally contacted the Brownback campaign regarding the Kansas Senate race. Oliver Dep. Tr. at 122-123. Mr. Rodriguez testified that he did not recall ever asking Mr. Oliver to contact any campaigns to discuss the advertising efforts, and that he has no recollection of ever being aware of any such contacts. Rodriguez Dep. Tr. at 303-306.

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District	Triad Audit Report on Campaign	J. Oliver Chart On Calls to Campaign	Subsequent CR or CREF Ad Campaign in that Congressional District
TX 02 Rep: Brian Babin  Dem: Jim Turner	Brian Babin Audit Report states that Turner sponsored legislation that granting automatic probation to first time felony offenders, voted for homosexual rights, and voted to expand that corporate income tax to affect small business.	Entry for TX 02 states that:  "Turner: State Jails, Homo rights, Taxes on small Bus., Auto probation to serious offenders." M0262	During Oct/Nov 1996, CR, acting under Triad's management, spent \$87,000 to broadcast a television advertisement in the Texas Second Congressional District <sup>52</sup> CR Stips. at ¶ 18.6. CR13 0015, CR13 0003.  The themes in the ad focused on Turner's record in the state legislature with regard to automatic probation, homosexual rights and taxes.
NY 26 Rep: Sue Wittig  Dem: Maurice Hinchey	Sue Wittig Audit Report states:  Lists a number of issues in campaign, but not those covered in subsequent CR ad	Entry for NY 26 states:  "Ethics (ie state Leg)"  M 0263	During Oct/Nov 1996, CR, acting under Triad's management, spent \$55,397 to broadcast a radio advertisement in New York's 26 <sup>th</sup> Congressional District. CR Stips at ¶12.1-12.4, CR13-0293. The theme of the ad was that Hinchey had taken funds from special interests and had been accused of overcharging taxpayers while in legislature. Id. TR10 -000111.

<sup>52</sup> Although all of the candidates and campaigns featured in the CR and CREF advertisements claimed to have had no prior knowledge of Triad's intent to sponsor such communications, one of the donors to CR (Peter Cloeren) provided the Commission with a sworn statement indicating that Brian Babin solicited him to make a contribution to CR to that it could sponsor advertising that would benefit the Babin campaign. See Complaint in MUR 4783 and Cloeren affidavit submitted to Congressional Investigators. In his deposition, Dr. Babin and his campaign consultant, Walter Whetsell, both denied having any prior knowledge of the CR ad campaign or of any such solicitation of funds from Mr. Cloeren.

<p>MT AL</p> <p>Rep: Rick Hill</p> <p>Dem: Bill Yellowtail</p>	<p>Rick Hill Audit Report; "Yellowtail vulnerable to key issues of "1) Wife beating; 2) Robbery of Camera Store; 3) Dead Beat Dad; 4) Vote against elderly and families." TR15 001143-45.</p> <p>One of the Hill campaign's purported top "Needs" was for a "3<sup>rd</sup> Party to 'expose' Yellowtail." <i>Id.</i><sup>53</sup></p>	<p>Entry for MT AL states:</p> <p>Yellowtail: Felon, Wife Beater, Dead Beat Dad. Opp going after Dead-beat Dads" M 0264</p>	<p>During Oct/Nov 1996, CR, acting under Triad's management, spent \$141,416 to broadcast television advertisements and sponsor a phone bank program in Montana. CR Stips at ¶11.1-11.8.</p> <p>The two television ads and one telephone bank script focus on the issues relating to Yellowtail's prior criminal acts and allegations of spousal abuse. One television ad focused on Yellowtail's position on taxes.</p>
<p>IL 20</p> <p>Rep: John Shimkus</p> <p>Dem:</p>	<p>John Shimkus Audit Report states:</p> <p>"Good Issues for Shimkus: \$20,000 pay raise return, \$135,000 return to taxpayers, Fiscal Conservatism." and "Good Issues against Hoffmann: Big Tax and Spend, Liberal."</p>	<p>Entry for IL 20 states:</p> <p>"Taxes Bal. Budget Responsibility" M0264</p>	<p>During Oct/Nov 1996, CR, acting under Triad's management, spent at least \$34,750 to broadcast radio advertisements in the Illinois 20<sup>th</sup> Congressional District. CREF Stips at ¶9.1-9.4, CR13-202-03.</p> <p>The themes of these ads focus on Shimkus record on Taxes, Balanced Budget and his personal responsibility.</p>

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<sup>53</sup> In deposition testimony, Mr. Rodriguez indicated that he could not remember whether the reference to the Hill campaign needing a 3<sup>rd</sup> Party to expose Yellowtail referred to his own conclusions or to a request from the Hill Campaign. Rodriguez Dep. Tr. at 322-26. The Hill campaign has consistently maintained that it did not know that Triad was planning to run any ads. Although the Hill campaign acknowledges telling Triad that it would not attack Yellowtail on the basis of the issues featured in the ads, it maintains that it did so in response to an inquiry from Mr. Rodriguez and not as part of an attempt to request or suggest a topic for any ads.

District	Triad Audit Report on Campaign	J. Oliver Chart On Calls to Campaign	Subsequent CR or CREF Ad Campaign in that Congressional District
AR 01 Rep: Warren Dupwe  Dem: Marion Berry	Warren Dupwe Audit Rpt states:  Key Issue Section is blank	Entry for AR 01 states:  Berry: Hires Cheap Mexican Labor  Does not disagree with Clinton on any issues  Lied about elective experience (city council)  M0264	During Oct/Nov 1996, CR, acting under Triad's management, spent \$75,751 to broadcast a television advertisement in the Arkansas First Congressional District. CR Stips at ¶5.1-5.2, CR13 0205  The theme of the ad was that Berry had close ties to Bill Clinton, had lied about no prior elective office, and had hired foreign nationals to work on his farm. <i>Id.</i>
OR 01 Rep: Bill Witt  Dem: Elizabeth Furse	Bill Witt Audit Rpt states:  Key Issues:  Big Spender . . .  Balanced Budget  TR15 001157	Entry for OR 01 states:  Furse:  Bal. Budget-opp. . . . . Taxes . . . . Taxed Medicare  M0263	During Oct/Nov 1996, CR, acting under Triad's management, spent \$42,890 to broadcast a television advertisement in Oregon's First Congressional District. CR Stips at ¶14.1-14.5, CR13 0257, CR13 0004.  The theme of the ad was that Furse had voted against the Balanced Budget Amendment and had voted to increase Social Security taxes. <i>Id.</i>

District	Triad Audit Report on Campaign	J. Oliver Chart On Calls to Campaign	Subsequent CR or CREF Ad Campaign in that Congressional District
WA 09 Rep: Randy Tate Dem: Adam Smith	Randy Tate Audit Report lists "Key Issues" as including "Opponent's [Smith's] votes on taxes and self-defense in the Legislature."  "Also, if the 'coalition' is going to continue on with their currently running positive ads, there needs to be ads on Smith on the issues of taxes and self-defense at home." TR15 00048-50	Entry for WA 09:  "Tate: Defend him Smith Taxes - pro 50% 1.2 billion Crime -opp bill to allow any means to repel intruder Term Limits - flip"	During Oct/Nov 1996, CREF, acting under Triad's management, spent \$74,238 to distribute various direct mail pieces in the WA 09 area. CR Stips at ¶6.6, FECCREF 00220, FECCREF 00204 and FECCREF 00228.  The topics of the ads were Smith's record on taxes and term limits.
SD AL Rep: John Thune Dem: Tim Weiland	John Thune Audit Report states that Key Issues are "Balanced Budget Amendment". .. "If there is anything we can do to help it would probably be in the area of 501(c)(4) education with regards to the liberal tendencies of his opponent." TR15 00011401-12	Entry for SD AL states:  Weiland  Outside Labor \$ Bal. Budget - opp Nat. Health - opp. M0263	During Oct/Nov 1996, CREF, acting under Triad's management, spent at least \$8,511.11 to broadcast a television advertisement entitled "Compare-SD" in South Dakota. CREF Stips at ¶6.11.  The topics of this ad were the Balanced Budget Amendment and contributions from "outside labor." CREF14 0434.

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District	Triad Audit Report on Campaign	J. Oliver Chart On Calls to Campaign	Subsequent CR or CREF Ad Campaign in that Congressional District
KS Sen Rep: Sam Brownback  Dem: Jill Docking	No written audit report for general election campaign.	Entry for KS Sen states:  Docking: Bal Budget - opp Taxes - ref NTU Liberal ...  M0260	During Oct/Nov 1996, CREF, acting under Triad's management, spent at least \$434,279 to broadcast television and radio advertisements in Kansas. CREF Stips at ¶6.2.  The topics of these ads were balanced budget amendment and taxes. Docking was labeled as a "Liberal."
KS 04 Rep: Todd Tiahart  Dem: Randy Rathburn	Tiahart Audit Report notes: "Wichita is the only media market that matters." TR15 000076	Entry for KS 04 states:  Rathburn: Taxes - opp. \$500/child No Bal. Bud. Ran Clinton's 92 KS campaign  M0261	During Oct/Nov 1996, CREF, acting under Triad's management, spent \$70,907 for television and radio ads, and an additional \$37,686 for direct mail and telephone banks, in the Kansas Fourth Congressional District. CREF Stips at ¶6.4.  These ads focused on Rathburn's opposition to the Balanced Budget Amendment and spending cuts. <i>Id.</i>

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District	Triad Audit Report on Campaign	J. Oliver Chart On Calls to Campaign	Subsequent CR or CREF Ad Campaign in that Congressional District
NC 04 Rep: Fred Heineman  Dem: David Price	No written audit report on Heineman campaign.	Entry for NC 04 states:  Price: S&L vote-reward NTU rating Crime votes  M0261	During Oct/Nov 1996, CREF, acting under Triad's management, spent \$50,106 to broadcast a radio advertisement in the North Carolina Fourth Congressional District. CREF Stips at ¶6.9, CREF 14 0448.  The theme of the ad was that Price took vacations and donations from S&L's; that the Nat'l Taxpayers Union gave Price a rating of "F" and that Price fought against the death penalty and for prisoners.
TN 04 Rep: Van Hilleary  Dem: Mark Stewart	Van Hilleary Audit Report states: "The Democrat nominee is attorney Mark Stewart, who is running as a 'down home country lawyer' instead of the trial lawyer which he is." TR15 000059	Entry for TN 04 states:  Welfare Crime Term Limits  M0260	During Oct/Nov 1996, CREF, acting under Triad's management, spent \$15,046 to broadcast a radio advertisement in the Tennessee Fourth Congressional District. CREF Stips at ¶ 6.12, CREF 14 0444.  The theme of the ad was that Mark Stewart, a trial lawyer, had represented drunk drivers and is soft on crime. <i>Id.</i>

2 Mr. Oliver also testified some of the vendors that Triad Inc. hired to produce the  
3 ads would contacted him to obtain the information that Triad had gathered on each  
4 congressional district during its political audits. Oliver Dep. Tr. at 135-137.<sup>54</sup>

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<sup>54</sup> In some instances, vendors who were preparing an advertisement to be broadcast in a particular district, requested that Mr. Oliver obtain additional information or clarify the information previously obtained during the political audit of a campaign. *Id.* at 129-130 and 137-138.

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1                   7.     Robert Cone's Other Political Contributions

2                   During both 1995 and 1996, without counting the funds he sent to Triad/CSM and  
3     Triad Inc., CR or CREF, Robert Cone made \$25,000 in federal political contributions.

4                   During 1995, Mr. Cone contributed \$2500 apiece to ten PACs, including AFE and  
5     CAFE. Those contributions occurred as follows:

<u>Date</u>	<u>Name of PAC</u>	<u>Amount</u>
12/6/95	AFE PAC	\$ 2,500
12/6/95	CAFE PAC	\$ 2,500
12/6/95	Faith Family & Freedom	\$ 2,500
12/6/95	FIGHT PAC	\$ 2,500
12/6/95	Conservative Campaign Fund	\$ 2,500
12/6/95	Free Congress PAC	\$ 2,500
12/6/95	The Republican Majority Fund	\$ 2,500
12/6/95	The Right to Work PAC	\$ 2,500
12/27/95	Eagle Forum PAC	\$ 2,500
12/27/95	RNC Life PAC	\$ 2,500

17     CONE 000002-003.

18                   During 1996, Mr. Cone contributed \$25,000 to federal congressional candidate  
19     campaign committees and political action committees. Specifically, Mr. Cone made the  
20     twenty-three \$1,000 contributions, and four \$500 contributions detailed below:

<u>Date</u>	<u>Name of Candidate</u>	<u>Amount</u>
12/26/95	Leinbach 96	\$ 1,000
4/4/96	Pitts for Congress	\$ 1,000
4/27/96	Scott for Congress	\$ 1,000
4/27/96	Wilkie for Congress	\$ 1,000
4/27/96	Pittman for Congress	\$ 1,000
5/24/96	Republican Majority Fund	\$ 1,000



1	5/24/96	Bob Riley for Congress	\$ 1,000
2	6/27/96	Leinbach 96	\$ 1,000
3	7/24/96	Brownback for US Senate	\$1,000
4	7/24/96	Ryun for Congress	\$ 500
5	7/24/96	Holcomb for Congress	\$ 1,000
6	9/9/96	Joe DioGuardi for Congress	\$ 1,000
7	8/6/96	Schaffer for Congress	\$ 1,000
8	8/19/96	Meier for Senate	\$ 1,000
9	10/8/96	J.C. Watts for Congress	\$ 1,000
10	10/8/96	Jenkins for Senate 96	\$ 1,000
11	10/8/96	Friends of Joe Pitts	\$ 1,000
12	10/8/96	Friends of Bob Kilbanks	\$ 1,000
13	10/8/96	Clatworthy for US Senate	\$ 1,000
14	10/8/96	People for English	\$ 1,000
15	10/16/96	Bigham for Congress	\$ 1,000
16	10/16/96	John Thune for Congress	\$ 1,000
17	10/16/96	Riley for Congress	\$ 500
18	10/16/96	Babin for Congress	\$ 500
19	10/16/96	Gill for Congress	\$ 500
20	10/16/96	Randy Tate for Congress	\$ 1,000

21 CONE 000001-002. The federal political committees and candidates to which Mr. Cone  
 22 made political contributions in 1996 were all featured in, and recommended by, Triad  
 23 publications.

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1           **C.     ANALYSIS**

2           As discussed below, the evidence obtained during the investigation indicates that  
3     Triad/CSM, Triad Inc., CREF and CR were affiliated political committees, and that the  
4     funds Robert Cone provided to fund their various operations were contributions made for  
5     the purpose of influencing federal elections.<sup>55</sup> Given the amount of money that Robert  
6     Cone contributed to Triad/CSM, Triad Inc., CREF and CR during 1995 and 1996, this  
7     Office is prepared to recommend that the Commission find probable cause to believe that  
8     Robert Cone violated 2 U.S.C. §§ 441a(a)(1) and 441a(a)(3).

9                   **1.     Triad, CREF and CR are Political Committees**

10           Neither Triad/CSM, Triad Inc., CREF nor CR have ever registered with, or  
11     reported to, the Commission as political committees. The information obtained during  
12     the investigation into these matters, however, shows that all four entities made  
13     expenditures and received contributions well in excess of \$1,000 for the purpose of  
14     influencing federal elections. Further, the evidence shows that all four entities had a, if  
15     not the, major purpose of influencing federal elections. Thus, Triad/CSM and Triad Inc.,  
16     as well as CREF and CR, triggered the political committee reporting requirements of  
17     2 U.S.C. §§ 433 and 434 during the 1996 election cycle.

18                   **a.     Triad**

19           The evidence gathered during the investigation, as set forth above, shows that  
20     Triad was a political committee. First, based on both its own statements and actions, it is

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<sup>55</sup>       The evidence also shows that AFE and CAFÉ, which were established, financed and managed by Triad/CSM and Carolyn Malenick were part of this group of affiliated entities.

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1 clear that a, if not the, major purpose of Triad/CSM and Triad Inc. during the 1996  
2 election cycle was to support particular candidates for federal office both in Republican  
3 Party primaries and in the general election. Second, the evidence shows that both  
4 Triad/CSM and Triad Inc. made expenditures and in-kind contributions, and accepted  
5 contributions to fund such activities, for the purpose of influencing federal elections. For  
6 each entity, these expenditures and contributions far exceeded the \$1,000 threshold  
7 established by the Act for registration and reporting as a political committee.

8 For Triad/CSM, the \$1,000 threshold may have been exceeded by as early as July  
9 1995, when it first began making payments to Mr. Rodriguez for political audits on the  
10 re-election campaigns of Republican House Freshmen, and no later than December  
11 1995, when it began to make political contributions to selected candidates through AFE  
12 and CAFE. For Triad Inc., which was incorporated in May 1996, the \$1,000 threshold for  
13 contributions and expenditures was exceeded no later than early July 1996, when it began  
14 receiving funds from Robert Cone and using its corporate bank account to pay for  
15 expenses associated with CREF advertising, as well as for the ongoing expenses  
16 associated with the political audits and publications that expressly advocated financial  
17 support for, or the election of, various candidates.

18 As noted above, Triad's brochures, promotional videotape and other publications  
19 set forth the following election-related "goals":  
20

- 1) *Return Republican House Freshmen;*
- 2) *Increase by 30 the Republican House Majority; [and]*
- 3) *Increase Senate Republicans to a Filibuster-proof 60.*

Triad Stips. at ¶ 2.1(b). As discussed *supra*, Triad sought to present itself to the public as an organization that was working with the Republican congressional leadership to help re-elect Republican Freshmen congressmen and to help elect Republican candidates contending for open or Democratic seats in 1996.

In sum, the evidence demonstrates that most of Triad's 1995-1996 activities and disbursements were geared to garnering financial and other support for the election, and reelection, of conservative Republicans in the 1996 congressional elections. As discussed below, the support that Triad/CSM and Triad Inc. provided to selected campaigns began with the expenditures to conduct the political audits, which were the vehicle through which Triad developed information that was then used for the purpose of expressly advocating support for specific conservative candidates in various 1996 Republican primaries and later in the 1996 general election.

i. Triad/CSM Activities

By no later than July 1995, Triad was focused on providing support for the re-election of specific Freshman Republican incumbent congressmen. In its 1995 Activities Report, listing its key accomplishments for the first nine months of 1995, Triad noted its success in "working with key members of Congress in laying the groundwork to re-elect conservative freshmen and expand the House conservative majority." KI 00507 Specifically, Triad claimed that it had positioned itself to help the Republican leadership by assisting in the election of the new conservative chairman of the College Republican

1 Nation Committee “who is committed to assist candidates in the 1996 elections” and by  
2 helping a “key Congressional ally” in coordinating a Get Out the Vote phone program in  
3 a special election for a seat in the California legislature. *Id.* Finally, and most  
4 significantly, Triad noted that it hired Carlos Rodriguez to conduct political audits on the  
5 Freshman Republicans, so as “to gauge their strengths and weaknesses and provide  
6 advice where needed” in connection with their re-election efforts. KI 00507.

7 During the latter half of 1995, Triad/CSM paid Mr. Rodriguez \$32,730.71 in  
8 consulting fees and related expenses for his work to audit the Freshmen Republicans and  
9 conduct an analysis of congressional districts for the 1996 elections. *See Rodriguez Dep.*  
10 *Tr.* at 25-28 (establishing purpose of 1995 payments was for preliminary targeting of  
11 House seats for the 1996 elections); CM000461 (for amounts paid). For work performed  
12 in 1996, Triad/CSM and Triad Inc. paid Mr. Rodriguez a consulting fee of \$495,000,  
13 divided into twenty-four monthly installments of \$20,625 to be paid during 1996 and  
14 1997. In addition to the consulting fee, Triad/CSM and Triad Inc. also reimbursed  
15 Mr. Rodriguez for various expenses associated with the audits, including the salary of a  
16 political research assistant (Jason Oliver), fees for database management, telephone  
17 expenses, and travel expenses. Mr. Rodriguez testified that his efforts were focused  
18 almost exclusively on the political audits of 1996 congressional races, and that he had no  
19 responsibility for recruiting or counseling prospective donors. *Rodriguez Dep. Tr.* at 42.

20 During the summer and fall of 1995, Triad/CSM also began to focus on  
21 organizing its coalition of PACs (including AFE and CAFE) that would be able to send  
22 contributions to targeted candidates, including Republican Freshmen congressmen. In  
23 late 1995, Triad began to fund various PACs, including AFE and CAFE. By December

1 31, 1995, Triad/CSM had forwarded more than \$200,000 to its network of PACs. Triad  
2 Stips at ¶ 6.11. Triad/CSM also began to issue recommendations and instructions to the  
3 PACs regarding subsequent political contributions. For example, in late December 1995,  
4 Triad/CSM asked David Gilliard of CAFE PAC to send a memorandum instructing  
5 David Bauer, treasurer of AFE PAC, to send Ms. Malenick contribution checks for  
6 \$1,000 each made payable to the campaign committees of J.C. Watts, David Funderburk,  
7 Randy Tate, Jim Coburn, Dave Weldon, Matt Salmon and J.D. Hayworth. See 12/29/95  
8 Memorandum from Dave Gilliard to Dave Bauer; Gilliard Dep. Tr. at 75-77. AFE, for  
9 which Ms. Malenick was the *de facto* PAC Director, responded to these instructions by  
10 making the requested contributions. Bauer Dep. Tr. at 35-36.<sup>56</sup>

11 By the Spring of 1996, Triad/CSM began to audit the campaigns of candidates in  
12 upcoming Republican primaries who were not incumbent congressmen. As discussed  
13 above, Triad/CSM provided many such candidates with strategic and fundraising advice  
14 during its audits. Triad/CSM also commissioned pre-emptive opposition research on the  
15 candidates it favored, and discussed adverse information uncovered by these efforts with  
16 the candidates. Triad/CSM also began to send out Fax Alerts that expressly advocated

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<sup>56</sup> Triad/CSM and Triad Inc. also provided targeted campaigns with access to the coalition of PACs it organized in 1995-1996. Triad expended funds to solicit money for these PACs by contacting prospective donors in face-to-face meetings, by telephone and through a written PAC Memorandum. The benefits to the campaigns ultimately recommended to the PACs by Triad included the receipt of a substantial portion of the \$298,500 in contributions that Triad forwarded to the PACs in 1995-1996 (of this amount \$203,500 was forwarded to PACs in 1995 and \$92,800 was forwarded to PACs in 1996). See Triad Stips. at ¶ 6.1, 6.11-6.12. This benefit to the campaigns was made possible by Triad expenditures which allowed Carlos Rodriguez to travel to Washington, D.C. and develop his relationships with the PACs at regular monthly, and later bi-weekly, meetings. Rodriguez Dep. Tr. at 42-45; Oliver Dep. Tr. at 46-48. Triad also expended funds to prepare and send its analyses of different candidates to the PACs along with its express advocacy that the PACs, including AFE and CAFE, support specific candidates with their political contributions.

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1 support for specific conservative candidates during Republican primaries.<sup>57</sup> Finally, in  
2 addition to sending its publications to individual donors, Triad/CSM organized a network  
3 of donors and PACs (including PACs it entirely financed and controlled) from which it  
4 solicited contributions to targeted candidates.

5 For example, Mr. Rodriguez visited the Joe Pitts campaign to perform a political  
6 audit in early April 1996, and was subsequently reimbursed for expenses.<sup>58</sup> While neither  
7 Mr. Rodriguez nor Triad produced an audit report from this visit, Triad/CSM sent out two  
8 Fax Alerts regarding the Pitts campaign which discussed Mr. Rodriguez's activities. The  
9 first Fax Alert noted that Mr. Rodriguez had spoken with pollsters and campaign  
10 advisors, and solicited contributions to the Pitts campaign. FA14. The second Fax Alert,  
11 which was written after Pitts' primary victory, reported that Carolyn Malenick and Carlos  
12 Rodriguez spoke to Joe Pitts and his campaign to identify the needs of that campaign, and  
13 they determined that a phone bank was imperative. That Fax Alert noted that after  
14 discussions with Triad, a phone bank program was developed by the campaign. The Fax  
15 Alert also indicated that Triad's Finance Director worked to raise \$20,000 from Triad  
16 donors and PACs to finance the program and that "Triad made sure the funds donated by

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<sup>57</sup> During the Spring of 1996, Triad/CSM also forwarded substantial political contributions from individual contributors to each of the candidates for which it had expressly advocated support in its Fax Alerts. For example, Triad/CSM forwarded at least \$13,550 to the Joe Pitts campaign, \$1,100 to the Marvin Scott campaign, \$4,500 to the Robert Wilkie campaign, \$5,100 to the Leroy Pittman campaign, \$14,500 to the John Thune campaign, \$8,700 to the Bob Riley campaign, and \$250 to the Mike Pappas campaign. These fundraising subtotals do not include contributions that individuals or PACs who received the Triad Fax Alerts discussing the candidates sent directly to these Triad-endorsed campaigns.

<sup>58</sup> On April 27, 1996, Triad reimbursed Mr. Rodriguez for \$9,877.96 in expenses attributable to four invoices, of which three were produced. It would appear that travel for the Pitts audit would have been itemized on this missing invoice (No. 1065), which accounted for \$1700.81 of this April 1996 reimbursement.

1 its clients were used to pay for the phone bank program for the primary elections." See

2 FA13. The Fax Alert quoted Mr. Pitts as stating that

3 TRIAD saved the day for my campaign . . . TRIAD played  
4 a major role for its' [sic] clients in identifying what our  
5 campaign needed, mobilizing the grassroots network and  
6 coming through with the funds to help pay for our phone  
7 bank program. Our victory is truly a TRIAD victory.

8 The Fax Alerts establish that Triad representatives consulted with the Pitts campaign,  
9 and, as a result of these consultations, provided the services that met the campaign's  
10 needs in connection with the primary. The thank you note from the campaign  
11 corroborates that the campaign was aware of the services being provided by Triad and  
12 recognized them as being of value.

13 The direct expenditures by Triad/CSM which represent in-kind contributions to  
14 the Joe Pitts campaign would include at least: 1) the cost of Mr. Rodriguez's time, given  
15 his fee of more than \$1,000 per day, in performing the audit; 2) Mr. Rodriguez's travel  
16 expenses; 3) the costs associated with Ms. O'Rourke's time and fundraising efforts,  
17 including long-distance calls; and 4) the costs associated with forwarding contributor  
18 checks to the campaigns. Given the component costs discussed above, it is clear that  
19 Triad made expenditures and in-kind contributions in excess of \$1,000 for the Pitts  
20 campaign.

21 As detailed in other audit reports described above, Mr. Rodriguez provided  
22 similar strategic and fundraising advice to numerous campaigns that he visited on  
23 Triad/CSM and Triad Inc.'s behalf in 1995-1996. While Mr. Rodriguez characterized his  
24 advice as casual conversation, the evidence shows that, acting as a professional political  
25 consultant, whose skills were valued by Triad/CSM and Triad Inc. at more than \$1,000



1 per day, he identified deficiencies and suggested courses of action for campaigns, some of  
2 which had not retained any similarly skilled professional consultants.

3 Another category of in-kind contributions were the pre-emptive Opposition  
4 Research reports on various Republican candidates that were commissioned and paid for  
5 by Triad/CSM and Triad Inc. As noted above, Triad/CSM and Triad Inc. paid a company  
6 called Trenton West between \$2,000 and \$3,500 per candidate, for a total of \$35,270, to  
7 perform this type of "Opposition Research." See TR5 000009. Given Mr. Rodriguez's  
8 testimony that he discussed adverse findings with candidates, there is evidence that  
9 specific Republican candidates received an in-kind contribution in terms of a pre-emptive  
10 warning of what issues their opponents might raise during the upcoming campaign.

11 During the first half of 1996, Triad/CSM paid Mr. Rodriguez approximately  
12 \$166,220 for political audit expenses (\$123,750 in consulting fees, \$11,929 for Mr.  
13 Oliver's salary and benefits, \$8,000 for political database services, \$4,687 for California  
14 telephone expenses, \$4,946 for lodging, and \$12,908 for travel expenses). CSM d/b/a  
15 TRIAD General Ledger. Further, Triad/CSM entered into a contractual commitment to  
16 make payments of \$495,000 to Mr. Rodriguez during 1996-1997 for the 1996 political  
17 audits. Triad/CSM also paid Trenton West \$11,920 for opposition research reports. In  
18 addition, Triad/CSM paid Mr. Saracino political audit consulting fees of \$2500 and paid  
19 Ms. Mitchell consulting fees of \$28,534 during this period.<sup>59</sup>

20 In addition, Triad/CSM made substantial expenditures in connections with  
21 publications that included express advocacy. For example, during 1996, Triad paid its

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<sup>59</sup> Ms. Mitchell's discovery responses indicates that her fees were for work done both on political audits and on the CREF Union Media Advertising campaign.

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1 facsimile transmission vendor, Xpedite Systems \$1,051.41 by Triad/CSM. There is  
2 evidence that Triad/CSM also may have sent a substantial number of additional copies of  
3 various Fax Alerts via long distance telephone lines from its own office facsimile  
4 machine(s). Triad/CSM's records also reflect disbursements of \$4,060.37 for  
5 postage/shipping, \$1,008.78 for publishing materials. As part of its efforts to recruit  
6 donors to contribute to the candidates it endorsed, Triad/CSM also spent \$23,613.82 for a  
7 promotional video presentation.

8 During the first six months of 1996, Triad/CSM had total disbursements of  
9 approximately \$477,373. *See* Triad 96 Operating Budget 2<sup>nd</sup> Quarter – June 1996. In  
10 addition to the more than \$200,000 in expenditures for the political audits and  
11 communications - including expenditures for express advocacy - detailed above,  
12 Triad/CSM made expenditures of approximately \$200,000 in connection with  
13 administrative and promotional expenses, which supported Triad's efforts to recruit  
14 donors to direct their political contributions to specific federal candidates. Thus, the  
15 evidence indicates that overwhelming majority of Triad's disbursements were for the  
16 purpose of influencing federal elections.

17 ii. Triad Inc. Activities

18 The electoral nature of Triad's activities continued unabated after the  
19 incorporation of Triad Inc. in late May 1996. During the summer of 1996, using  
20 information gathered during political audits, Triad Inc. sent out Fax Alerts that expressly

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1 advocated support for particular candidates in Republican primaries.<sup>60</sup> Further, once the  
2 primaries had concluded, Triad Inc. used the information gathered during its political  
3 audits to expressly advocate support for numerous Republican candidates in the general  
4 election both through its Fax Alerts and the widely-distributed *Expanding the Majority*  
5 book, which pictured featured candidates and solicited contributions for their campaigns.

6 Triad Inc. also continued its efforts to encourage PACs (including PACs it entirely  
7 financed and controlled) to contribute to specific candidates. For example, Triad Inc.  
8 contacted at least five, and probably up to nine, PACs to determine their willingness to  
9 contribute to the Sam Brownback for US Senate Committee immediately prior to  
10 advising Brownback's in-laws, John and Ruth Stauffer (who already had made the  
11 maximum legal contribution to the Brownback campaign) which PACs they should  
12 contribute to in June and July 1996. The Stauffers made \$42,500 in contributions  
13 through Triad Inc. to nine PACs, which, within the few weeks remaining before an  
14 upcoming August primary, made subsequent contributions to the Brownback campaign.  
15 Two of the PACs sent their contributions to the Brownback campaign back through Triad  
16 Inc., which at least one of the PACs believed to be "handling Brownback fundraising."

17 During the latter half of 1996, Triad Inc. paid Mr. Rodriguez approximately  
18 \$149,265 for political audit expenses (\$103,125 in consulting fees, \$13,137 for Mr.  
19 Oliver's salary and benefits, \$10,000 for political database services, \$4,993 for California  
20 telephone expenses, \$2,087 for lodging and \$15,923 for travel expenses). TRIAD Inc.

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<sup>60</sup> As detailed above, during the Summer of 1996, the list of candidates in Republican primaries for which Triad Inc. expressly advocated support included: Sam Brownback, Jim Holcomb, Jim Ryun, Vince Snowbarger, Bob Schaffer and Woody Jenkins.

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1 General Ledger. During 1996, Triad Inc. also paid Mr. Saracino \$23,967 in political  
2 audit expenses (\$17,500 in consulting fees and \$6,467 for travel expenses). *Id.* Further,  
3 Triad Inc. assumed Triad/CSM's prior contractual commitment to make payments of  
4 \$495,000 to Mr. Rodriguez during 1996-1997 for the 1996 political audits. Triad Inc.  
5 also paid Trenton West \$23,350 for opposition research reports during this period.

6 In addition, Triad Inc. made substantial expenditures in connection with  
7 publications that included express advocacy. For example, during 1996, Triad Inc. paid  
8 its facsimile transmission vendor, Xpedit Systems \$6,216.68. There is evidence that  
9 Triad Inc. also may have sent a substantial number of additional copies of various Fax  
10 Alerts via long distance telephone lines from its own office facsimile machine(s). Triad's  
11 records also reflect disbursements of \$13,186.63 for postage and shipping of materials,  
12 and \$2,968.12 for publishing materials, which may have included costs associated with  
13 its *Expanding the Majority* book. Triad Budget Document at TR5 000009. According to  
14 its General Ledger, Triad had postage and delivery disbursements of more than \$5,000  
15 between September 23 and November 2, 1996, which was the time period in which it was  
16 sending out the *Expanding the Majority* book. *See* Triad Inc. General Ledger.

17 During the last six months of 1996, Triad Inc. had total disbursements of  
18 approximately \$950,000. *See* Triad 96 Operating Budget 4<sup>th</sup> Quarter – December 1996.  
19 In addition to the more than \$200,000 in expenditures for political audits and  
20 communications detailed above (as well as the obligation to make deferred payments of  
21 \$247,000), this total includes over \$300,000 in expenditures to support CREF advertising  
22 campaigns, \$145,000 spent on a non-electoral Choose Life/Life Media campaign, and  
23 approximately \$200,000 in other administrative and promotional expenses, which

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1 supported Triad's efforts to recruit donors to direct their political contributions to specific  
2 federal candidates. Thus, the evidence indicates that the overwhelming majority of  
3 Triad's disbursements were for the purpose of influencing federal elections.

4 iii. Lack of Commercial Purpose

5 Triad's claim that it was a commercial entity which collected fees for services  
6 rendered does not withstand close scrutiny. As discussed above, during the 1996 election  
7 cycle, Triad sent no bills or invoices for its services, and did not receive fees from most or  
8 any donors, and none from the PACs and campaigns it assisted. The conclusion that the  
9 funds provided to Triad in 1995-1996 were contributions, rather than fees, is supported by  
10 a range of factors. Mr. Cone voluntarily funded Triad on an "as you go" basis to meet its  
11 cash flow needs, not in exchange for particular services rendered. In fact, Mr. Cone made  
12 substantial financial transfers to Triad while receiving the same purported services and  
13 research information that others received for free. Cone Dep. Tr. at 210. In his own  
14 records, Mr. Cone characterized the transfers to Triad as "GI[Gift]: Political Indirect"  
15 rather than as fees for service. Finally, in its own mailings and memoranda, Triad  
16 referred to its prior receipts from Mr. Cone as having been "contributed or pledged."<sup>61</sup>

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<sup>61</sup> The evidence points to the conclusion that other monies Triad received were also contributions for influencing elections, rather than fees. As discussed above, Foster Freiss characterized his January 1996 check to Triad for \$1,000 as a "donation" or a "symbolic expression of support to let you know that we believe in your goals and we want to help you achieve them." See TMS 000819. Triad's oft-stated goals were to protect and expand the Republican majority. Ms. Malenick's reply thanked Mr. Freiss for his "contribution" and noted that she would provide him with information regarding Triad's budget, a courtesy she provided to those that "contribute" to overhead. TMS 000816. In response to this information, Mr. Freiss sent another check, this time for \$5,000, which was to be put "toward your organization's overhead and expenses." TMS 000814. Thus, the evidence shows that Mr. Friess' payment of \$6,000 to Triad amounted to contributions, and not fees for service.

1           Based on the evidence shown above, Triad received far more than \$1,000 in  
2     contributions and made far more than \$1,000 in expenditures for the purpose of  
3     influencing federal elections, and much of it was expended for express advocacy and in-  
4     kind contributions to specific campaigns. Even without accounting for the CR and CREF  
5     advertising expenditures that were coordinated with beneficiary campaigns, Triad/CSM  
6     and Triad Inc. made expenditures of more than \$600,000 to fund the political audit  
7     process and related publications which expressly advocated support of specific  
8     candidates.<sup>62</sup> When viewed in conjunction with its stated purpose of supporting the re-  
9     election of conservative Republican candidates, the available evidence demonstrates that  
10    Triad/CSM and Triad Inc. had a, if not the, major purpose of influencing the election of  
11    candidates to federal office.<sup>63</sup>

12           Therefore, Carolyn Malenick d/b/a Triad Management Services; and Triad  
13    Management Services Inc. were political committees that should have registered and  
14    reported to the Commission as such during the 1995-1996 election cycle.<sup>64</sup>

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<sup>62</sup>       This figure includes \$247,500 in additional payments for Mr. Rodriguez's 1996 services that Triad Inc. made in 1997.

<sup>63</sup>       As noted above, Triad's only non-electoral activities, the Choose Life Project/Life Media Campaign and the White House Christmas Card Book Project appear to have constituted no more than 10% of Triad's 1995-1996 activities.

<sup>64</sup>       Because Carolyn Malenick and Robert Cone established, financed, maintained or controlled Triad/CSM, Triad Inc., AFE, CAFÉ, CREF and CR, each of these entities was "affiliated" with Triad, and each other, for the purposes of the Act. 11 C.F.R. § 110.3(a)(2)(i) and (a)(2)(v). Accordingly, each of these entities would have been obligated to report their affiliation with each other in their filings with the Commission. Further, each of these entities share a single limit under the Act for receiving and making political contributions.

1                                    **b.      CREF and CR**

2                    The evidence gathered during the investigation, as set forth above, shows that  
3    CREF and CR were political committees. The record demonstrates that CREF and CR  
4    existed for the sole purpose of running public advertisements which commented on  
5    specific candidates in 1996 congressional elections. Based on statements made by Mr.  
6    Nofzizer (regarding CREF) and Mr. Flaherty (regarding CR), as well as by Triad Inc. in  
7    soliciting contributions for CREF and CR, it is clear that a, if not the, major purpose of  
8    CREF and CR during the 1996 election cycle was to support particular candidates for  
9    federal office. This conclusion is supported by the process by which Triad Inc. selected  
10   the districts in which CREF and CR advertisements were broadcast or distributed, the  
11   candidate-specific content of the advertisements, the timing of the advertisements to  
12   coincide with the 1996 elections, and the fact that Triad Inc. coordinated the content of  
13   the CREF and CR advertisements with specific congressional campaigns through both its  
14   political audits and the Jason Oliver telephone contacts.

15                   The evidence shows that CREF and CR accepted contributions and made  
16   coordinated advertising expenditures (which constituted in-kind contributions) for the  
17   purpose of influencing federal elections. For each entity, these expenditures and  
18   contributions far exceeded the \$1,000 threshold established by the Act for registration and  
19   reporting as a political committee. Both CREF and CR met the \$1,000 threshold for the  
20   receipt of political contributions in early October 1996, when they began to accept  
21   contributions for, and to make payments in connection with, their various pre-election

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1 advertising campaigns.<sup>65</sup> For CREF, this occurred no later than when it accepted a  
2 \$100,000 contribution from Robert Cummins on October 8, 1996. For CR, this occurred  
3 no later than when it accepted a \$50,000 contribution from Fred Sacher on October 4,  
4 1996. The threshold also was exceeded when CREF and CR made large disbursements to  
5 their advertising vendors, and when the broadcasting and distribution of the  
6 advertisements began in October 1996. CREF Stips at ¶ 4.15 and CR Stips at ¶ 3.2

7 The election-related purpose of the contributions received by CREF and CR in  
8 October 1996 can be derived from both the statements of Mr. Nofziger and Mr. Flaherty  
9 and the context in which Triad Inc. solicited the funds. While many of the contributors to  
10 CREF and CR did not cooperate with the Commission's investigation, there is  
11 documentary evidence as to the purpose for the funds that Koch Industries Inc. ("KII")  
12 sent to CREF and CR through EET. According to corporate documents included in its  
13 production, KII intended to have an "impact" on the 1996 congressional elections by  
14 "making a difference in some really pivotal elections" and to "help the best candidate[s]  
15 win in whatever way we can." In addition to funding a political action committee  
16 (KOCHPAC) and encouraging its executives to be active in giving support to selected  
17 candidates, KII developed a strategy to fund "[o]ther" efforts by which it could  
18 "participate" in some 1996 congressional elections by providing support to candidates  
19 whose economic and regulatory philosophy would advance KII's interests. *Id.* at KI  
20 00444-45; *See also* KII Briefing Materials on "The Strategy" KI 00477-80. To further  
21 these goals, KII transferred \$4.5 million to EET, of which \$1.8 million was subsequently

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<sup>65</sup> This Office is not contending that the CREF Summer Union Media Campaign, which took place prior to the Jason Oliver telephone calls to the different campaigns, was coordinated with any of the beneficiary Republican congressmen.



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1 transferred to CREF and CR.<sup>66</sup> The investigation has revealed that KII/EET  
2 representative Kenneth “Buddy” Barfield played a role in suggesting that CREF and CR  
3 select additional congressional districts for their advertising campaigns, and also played a  
4 role in selecting the vendors that CREF and CR used to produce advertisements in these  
5 additional districts. *See* Rodriguez Dep. Tr. at 274-280. Thus, the record establishes that  
6 CREF and CR accepted funds from KII, through EET, that were intended to influence  
7 federal elections.

8 Although CREF and CR avoided using express advocacy, the efforts of Triad Inc.  
9 to coordinate the CREF and CR messages with the Republican congressional campaigns  
10 demonstrate that the purpose of the advertising programs was to influence federal  
11 elections. Jason Oliver’s telephone contacts with the Republican congressional  
12 campaigns in the districts where CREF and CR activity was being contemplated gave  
13 those campaigns the opportunity to request or suggest the topics to be featured in the  
14 advertisements. This interaction and coordination with the campaigns insured that the  
15 advertisements have the maximum effectiveness in garnering support for or against the  
16 named candidates. As noted above, “[t]he fact that the candidate has requested or  
17 suggested that a spender engage in certain speech indicates that the speech is valuable to  
18 the candidate, giving [expressive] expenditures sufficient contribution-like qualities to  
19 fall within the Act . . . .” *Christian Coalition* at 92. Based on the court’s reasoning, Triad  
20 Inc.’s use of the campaigns’ requested or suggested advertising topics in the subsequent

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<sup>66</sup> As discussed below, CREF’s and CR’s acceptance of these funds also constitutes a basis for finding a violation of 2 U.S.C. § 441b.

CR or CREF ads resulted in coordinated expenditures, and represent in-kind contributions to those campaigns.

As noted above, Mr. Oliver testified that he contacted the Republican campaigns in each of the districts where CREF and CR advertising was contemplated in order to obtain their preferences as to the topics of any forthcoming education ads. Further, in most instances, as demonstrated by the Jason Oliver chart, the topics suggested or requested by the campaigns were used by CREF and CR. Given the amounts that CREF and CR spent on each campaign, the \$1,000 threshold for political committee status would be met if the Commission finds that each group coordinated just one advertisement apiece with a campaign audited by Triad and later contacted by Jason Oliver.

i. CREF

Based only on the expenditures for which the Jason Oliver chart reveals the use of the campaigns' stated preference with regard to advertising topics, CREF made the following coordinated expenditures, each of which constitutes an in-kind contribution to a 1996 congressional campaigns.

<u>Recipient Campaign</u>	<u>Amount of Advertising Expenditure</u>
Randy Tate	\$ 74,238 for Direct Mail Programs
John Thune	\$ 8,511 for Television Advertisements
Sam Brownback	\$434,279 for Television Advertisements
Todd Tiahart	\$ 70,907 for Television/Radio Ads and \$ 37,686 for Direct Mail Programs
Fred Heineman	\$ 50,106 for Radio Advertisements
Van Hilleary	\$ 15, 046 for Radio Advertisements

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ii. CR

Based only on the expenditures for which the Jason Oliver chart reveals the use of the campaigns' stated preference with regard to advertising topics, CR made the following coordinated expenditures, each of which constitutes an excessive in-kind contribution to a 1996 congressional campaign.

<u>Recipient Campaign</u>	<u>Amount of Advertising Expenditure</u>
Brian Babin (TX 02)	\$ 87,000 for Television Advertisements
Ray Clatworthy (DE Senate)	\$ 32,183 for Radio Advertisements
Rick Hill (MT at large)	\$141,416 for Television Advertisements and Telephone Banks
John Shimkus (IL 20)	\$ 34,750 for Radio Advertisements
Sue Wittig (NY 26)	\$ 42,890 for Radio Advertisements
Warren Dupwe (AR 01)	\$ 75,751 for Television Advertisements
Bill Witt (OR 01)	\$ 42,980 for Radio Advertisements

Based on the evidence set forth above, Citizens for the Republic Education Fund and Citizens for Reform were political committees that should have registered and reported to the Commission as such during the 1995-1996 election cycle.



1                   2.     **Robert Cone Made Excessive Contributions**

2             As detailed above, Robert Cone was the principal source of funding for  
3     Triad/CSM and Triad Inc., and a major source of funding for the Triad-managed  
4     advertising campaigns sponsored by CREF and CR during the 1996 election cycle. As  
5     set forth above, each of these entitites were political committees whose major purpose  
6     was to influence federal elections. The evidence gathered during the investigation  
7     establishes that Mr. Cone's payments to Triad/CSM and Triad Inc. were contributions to  
8     support activities designed to influence federal elections, and not fees for services. The  
9     evidence also establishes that Mr. Cone's payments to fund the CREF and CR advertising  
10    efforts that were coordinated with congressional campaigns also were intended to  
11    influence federal elections.

12            Mr. Cone was in nearly constant communication with Ms. Malenick. As detailed  
13    above, this included more than one hundred and forty-four (144) telephone calls and one  
14    hundred and one (101) facsimiles from Triad Inc.'s offices to Mr. Cone between May and  
15    December 1996. Although the Commission did not obtain his telephone records from  
16    1996, the record indicates that Mr. Cone also placed frequent telephone calls to Triad's  
17    offices and had regular face-to-face meetings with Triad personnel. Further, Mr. Cone  
18    received all the Triad Fax Alerts and the *Expanding the Majority* book containing express  
19    advocacy. Mr. Cone also attended meetings with Lyn Nofziger regarding CREF, and  
20    vendors regarding the CREF and CR advertising campaigns. Cone Dep. Tr. at 447-455.  
21    In sum, Mr. Cone knew that Triad/CSM, Triad Inc., CREF and CR were supporting  
22    particular candidates in connection with the 1996 federal elections.

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1 In describing the formation of Triad/CSM, Mr. Cone acknowledged that its  
2 purpose was "to develop wealthy donors both for electing or working on getting elected  
3 conservative Republican pro-life candidates." Cone Dep. Tr. at 115. Mr. Cone also  
4 signed a letter from Triad to prospective donors which stated that "Not only does Triad  
5 know who to support, but also how much they need and the most effective way to deliver  
6 help." Cone Dep. Tr. at 410-424, JS00009. Further, Mr. Cone acknowledged that the  
7 CREF and CR ads were related to the 1996 congressional elections. Cone Dep. Tr. at  
8 431. Mr. Cone also testified that the ads were intended to influence voters by bringing  
9 issues to their attention so that "they can make informed decisions about what they were  
10 going to do in the fall" and acknowledged that this included influencing how people  
11 would vote. Cone Dep. Tr. at 431. Mr. Cone also agreed that one of the intended  
12 outcomes of the CREF and CR ads was to improve the public perception of, and benefit,  
13 conservative Republican candidates. Cone Dep. Tr. at 433-434. Accordingly, the funds  
14 that Mr. Cone provided to Triad/CSM, Triad Inc., CREF and CR must be regarded as  
15 contributions made for the purpose of influencing federal elections.

16 For the reasons set forth above, this Office is recommending that the Commission  
17 find that all but the first \$5,000 of the \$175,000 that Mr. Cone sent to Triad/CSM  
18 between July 1 and December 31, 1995 were excessive contributions.<sup>67</sup> Further,  
19 Mr. Cone also made political contributions of \$2,500 apiece, or a total of \$5,000, to  
20 Triad's affiliated PACs, AFE and CAFE in December 1995, which, due to the single

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<sup>67</sup> Out of an abundance of caution, this Office is not recommending that the first \$25,000 that Mr. Cone provided to Triad/CSM in February 1995 be regarded as a political contribution. While these funds were intended to support Triad's efforts to elect conservative candidates, it is not clear that Triad selected specific candidates to support until Carlos Rodriguez began to audit the incumbent Republican Freshmen Congressmen in July 1995.

1 contribution limit shared by affiliated committees, also constituted excessive  
2 contributions. Thus, during 1995, Robert Cone made excessive contributions of  
3 \$175,000 to the group of affiliated political committees that included Triad/CSM, AFE  
4 and CAFE in violation of 2 U.S.C. §§ 441a(a)(1) and 441a(a)(3).

5 Additionally, all but the first \$5,000 of the \$465,500 that Mr. Cone sent to  
6 Triad/CSM in 1996 and the \$426,621 that Mr. Cone sent to Triad Inc. in 1996 were  
7 excessive contributions. Further, the \$500,000 that Mr. Cone sent to CREF between July  
8 and October 1996 and the \$400,000 that Mr. Cone sent to CR in October 1996 also  
9 constituted excessive contributions to the same group of affiliated entities which shared a  
10 single contribution limit. Thus, during 1996, Robert Cone made excessive contributions  
11 of approximately \$1,785,000 to the group of affiliated political committees that included  
12 Triad/CSM, Triad Inc., CR and CREF.

13 Because the total amount that Mr. Cone contributed to Triad/CSM, Triad Inc.,  
14 CREF and CR in 1995 and 1996 exceed the \$5,000 limit imposed by the Act, this Office  
15 is prepared to recommend that the Commission find probable cause to believe that Robert  
16 Cone violated 2 U.S.C. § 441a(a)(1). Further, because Mr. Cone's contributions during  
17 1995 and 1996 exceeded \$25,000, this Office is prepared to recommend that the  
18 Commission find probable cause to believe that Robert Cone violated 2 U.S.C.  
19 § 441a(a)(3).


20

1 **IV. GENERAL COUNSEL'S RECOMMENDATIONS**

- 2 1. Find probable cause to believe Robert Cone violated 2 U.S.C.  
3 § 441a(a)(1).  
4 2. Find probable cause to believe Robert Cone violated 2 U.S.C.  
5 § 441a(a)(3).  
6  
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8

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10  
11 Date

7/18/01

  
Lois G. Lerner  
Acting General Counsel

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